



SURESH B. PAWAR

B.A.L.L.B. Advocate

SPEECH ON THE TOPIC

“RECOVERY OF DUES OF SOCIETY AND IT’S WINDING-UP”

Dear Friends,

We are going to discuss on the subject **Recovery of Dues of Society and its Winding-up** in the Co-operative institutes.

Recovery of loan is an important subject and duty cast upon entire Managing Committee of every society. At the time of taking loan the borrower and guarantors appears to be very sweet person as their financial need is to be fulfilled. But at the time of repayment we cannot expect the same demeanor from either borrower or guarantor. Though recovery of loan & dues are painful acts but at the same time for effective and healthy co-operative movement in State much importance is to be given to the recovery dues. Though the Act, Rule and Bye-Laws are sufficient for effective recovery of loan I feel through General Body concerned persons are responsible for the recovery. I would also like to mention, here, that the object clause of the society must provide for advancement of loan & other facilities. Lack of anything in the object of may result into bad debts. Therefore, for the smooth and effective management for recovery of the dues in every society prudent officer by election, selection or by employment need to be deployed.

In our state of Maharashtra Co-operative institutes are governed under two major Acts i.e. 1) Maharashtra State Co-operative Societies Act, 1960 and Rules, 1961 made there under, 2) Arbitration & Consolidation Act, 1996 preferably Multistate Co-operative Society Act, 2002. All the Co-operative institutes are governed by these enactments in our state of Maharashtra.



SURESH B. PAWAR

B.A.L.L.B. Advocate

Under the MCS Act, 1960 there are two important provisions for the recovery of loan and dues of the society. Section 91 of MCS Act empowers Co-operative Courts in the States to look after disputes relating to recovery including complicated money claims. Under Section 101 dues of the society **only** loan amount, maintenance amount can only be recovered from member, non member etc. of the society. In my opinion some times in particular circumstances one can seek help of Section 79 of MCS Act, 1960 to recover sum. I will elaborate it in my speech on the schedule date.

However, in my opinion recovery through Hon'ble Co-operative Court is the effective one for the following reasons :

- a) Co-operative courts are full fledged judicial officers having all the powers of Civil Courts. Such powers are not vested with concerned Registrar U/s 101 of MCS Act, 1960.
- b) Co-operative Courts have powers of contempt of the court which is lacking in the jurisdiction of U/s 101.
- c) Interlocutory / interim orders such as prohibitory orders or attachment before award can be passed U/s 95 by the Co-operative Courts only. But concerned Registrar cannot entertain such application. I did come across cases wherein the society tried U/s 101 but in the mean time the borrower and guarantor disposed off their properties. Because of the certificate U/s 101, society could not avail jurisdiction of Co-operative court U/s 91. Had the society gone u/s 91 it would have been in a position to get the prohibitory orders or attachment orders against the properties of borrower or guarantor. Furthermore, complicated recovery Suits can only be



SURESH B. PAWAR

B.A.L.L.B. Advocate

dealt with u/s 91 such as misapplication of funds, misappropriation of money, fraud etc.

Friends, I will cite number of cases, will give examples and illustrations at the time of our discussion. I know that, by plain reading you are in a position to interpret the law, but by exact examples with respect to recovery misappropriation, fraud you will be in a position to understand the main intention of legislators in framing this law.

- d) U/s 101, Registrar is a quasi-judicial officer having limited powers while co-operative courts have all the powers of the Civil Courts. Hence, it is an effective remedy.
- e) Award passed by the court can be executed U/s 98 of MCS Act, either through Civil Court as if it is a decree and but under certificate u/s 101 is only recoverable as Land Revenue Code through Revenue Officers or Special Officers if any appointed by the Government.

Sometimes the administrative powers of concerned Registrar U/s 79 can be utilized to recover the amount. U/s 79 it is obligatory on the part of every society to maintain the accounts properly and for non compliance directions can be had U/s 79 (1) from concerned Registrar.

I would like to mention, here, that the amount of misappropriation in the Co-operative institutes can only be recovered through Co-operative Court U/s 91.



SURESH B. PAWAR

B.A.L.L.B. Advocate

Section 83 – 88 also deals with recovery of certain amount from the members of the Managing Committee but it is not covered under the head **LOAN**. I will explain in our meeting on the schedule day.

For the recovery of the loan under MCS Rules, 1961 Rule 80 – 84 are of more helpful. Under Rule 107 vast powers are given to concerned Registrar by way of procedure for Sale of attached property. So also Section 156 also empowers concerned Registrar to do the needful because U/s 156 (2) he assumes power of Civil Courts.

Regarding recovery of loan under Arbitration & Conciliation Act, there is a necessity of contractual obligation between the parties. In such cases both the parties can select arbitrator of their choice to resolve dispute of recovery.

Recently in 2002 there is an enactment popularly known as Multi-state Co-operative Societies Act, 2002. U/s 84 the every such institute governed can recover its loan through Arbitral Proceedings.

Friends, the most sad part of co-operative movement is closure of the co-operative institute i.e. winding-up of the society u/s 102 and Chapter X of MCS Act, 1960, provisions of liquidation are explained.

U/s 102 the grounds are given were by a concerned Registrar can take action of winding-up of the society. Followings are the grounds :

- a) If there is enquiry u/s 83;
- b) If there is an inspection u/s 84;
- c) If there is decision u/s 88 by way of report; and
- d) If there is action u/s 89A.



SURESH B. PAWAR

B.A.L.L.B. Advocate

On the application of 3/4th Majority of member's resolution in the Special General Body Meeting, Registrar can initiate the action.

Suo-moto Registrar can if :

- a) Society failed to commence its work;
- b) Has ceased working;
- c) Possess share deposit not exceeding Rs.500/-;
- d) Fail to comply conditions placed at its registration.

On the above grounds, Registrar may appoint a liquidator.

U/s 102 (2), Registrar has powers to issue interim orders of appointment of liquidator etc.

U/s 103 appointment of liquidator is to be made by the concerned Registrar, it is to be noted here that, the liquidator has all the powers of Managing Committee, he is put with the custody of records & properties.

It is also to be noted here that, the Registrar can in case of favourable report, vacate the interim order and may restore the situation. Unfortunately, in the State of Maharashtra there is no proper implementation of law in strict sense which resulted in closure of big co-operative institute. I would like to mention here that the up-liftment of common man is possible only with the help of co-operative movement in our State, therefore, in my opinion serious view and thinking must be there to strengthen the movement.

Lastly, I would like to submit here that, in India there is a tremendous time consuming judicial and quasi-judicial systems. We need to see Civil Procedure Code, Law of Limitations, Evidence Act in strict



SURESH B. PAWAR

B.A.L.L.B. Advocate

sense and sometimes procedural delay is also reason for partial downfall of co-operative movement.

I hope this will help all of you to implement the Act in true sence.

My best wishes to you all.

Thanking you.

Adv. Suresh B. Pawar