

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/SPECIAL CIVIL APPLICATION NO. 12511 of 2011**

=====

HIRABHAI KANCHANLAL MODI & 8 other(s)

Versus

REGISTRAR, COOPERATIVE SOCIETIES & 1 other(s)

=====

Appearance:

MR B S PATEL SENIOR ADVOCATE for MR CHIRAG B  
PATEL(3679) for the Petitioner(s) No.

1,2,3,4,5,6,7,8,9

GOVERNMENT PLEADER for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 1

=====

**CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

**Date : 02/08/2022**

**ORAL ORDER**

1.This is a writ application under Article 226 of the Constitution of India seeking the following reliefs :-

"(A) Your Lordships be pleased to issue writ of prohibition or any other appropriate writ, order or direction, quashing and setting aside the show cause notice issued by the respondent authority 26/07/2011 at Annexure "A" to the petition.

(B) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to STAY the further proceedings in pursuance of the show cause notice issued by the respondent authority 26/07/2011 at Annexure "A" to the petition;

(C) Cost of this petition be provided for;

(D) Be pleased to grant such other and further relief/s as may be deemed just and proper in the facts and circumstances of the case."

2. Heard Mr. B.S. Patel, the learned senior advocate for Mr. Chirag Patel, the learned advocate appearing for the writ applicants.
3. Though served, none appears for the respondents.
4. The writ applicants herein were the members / office bearer of Ankleshwar Nagrik Sahakari Bank Limited. Custodian came to be appointed on 12/11/2004. Prior to appointment of custodian, donation had been given to Bank for which liquidator submitted a report dated 07/06/2011 Annexure-B (Page Nos.31 to 41). The State Registrar-the respondent issued show cause notice on 26/07/2011 for initiation of inquiry against the writ applicants. (Page Nos.19 to 30). A reply came to be filed by the members i.e. the writ applicants stating that the said show cause notice was against the provisions of Section 93 of the Act that five years from the date of inquiry be considered, prior to that no order under Section 93 of the Act can be passed. The inquiry report dated 07/06/2011 is duly produced at Annexure-B (Page Nos. 31 to 41).
5. It is the case of the writ applicants that all the transactions were much prior to the year 2004. The respondent passed the order holding that the provisions of Section 93 of the Act is to be considered for holding inquiry under Section 93 of the Act. The provisions of the

limitation Act are to be considered without considering the provisions of Section 93 of the Act.

6. It is the case of the writ applicants that any transaction prior to the period of five years from the inquiry report dated 07/06/2011 is not maintainable, in view of the settled position of law.

7. At this stage, it is apposite to refer to the law as laid down by this Court in Special Civil Application No.4402 of 2014, the relevant paragraph Nos.11 to 14, which reads thus :-

"11. Therefore, it appears to the Court that even without going into the grounds for which the Tribunal allowed the appeal of the respondents No.2 to 11, the order passed under Section 93 of the Act against the respondents No.2 to 11 could not stand scrutiny of law as in the facts of the case, the provisions of Section 93 of the Act were not attracted.

12. The inquiry under Section 93 of the Act against any person is permissible only when such person has taken any part in organization of the society and misapplied or retained money or committed other illegality within 5 years prior to the date of audit, inquiry, inspection under Sections 84, 86 and 87 of the Act respectively or prior to the date of winding up of the society.

13. There is no dispute about the fact that the resolutions for investment were

passed in the meeting by the respondents No.2 to 10 as Directors and acted upon by the respondent no.11 as Manager in the year 1996. As stated by the Tribunal, such resolutions were then confirmed in the meeting by the members. As stated in the order at Annexure:C, the inquiry under Section 86 of the Act was ordered on 07.09.2010. Such inquiry was obviously after more than a period of 5 years from the date of decision to invest the amounts.

14. Section 93 of the Act reads as under:

*"93 (1) Where in the course of or as a result of an audit under section 84, or an inquiry under Section 86 or an inspection under section 87, or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorized to make inquiry under section 86, or the person authorized to inspect the books under section 87, or the Liquidator under section 110, that any person who has taken any part in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorized by him in that behalf may investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased*



*person to his requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorized under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.*

*(2) The Registrar or the person authorized under sub-section (1) in making any order under this section, may provide therein for the payment of the costs or any part thereof such investigation, as he thinks just and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.*

*(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible,"*

8. The aforesaid decision came to be confirmed by the Hon'ble Division Bench in Letters Patent Appeal No.721 of 2014, relevant paragraph No.5 reads thus :-

"Learned Single Judge has dismissed the writ petition of the Bank on sole ground noted above. We also concur with said view. This was however not the ground on which the decision of the Co.Op.Tribunal was based. Thus, the contentions of the Bank on the merits of the report under Section 93(1) have remained untested. While therefore dismissing this Letters Patent Appeal, we clarify that observations of the Co.Op.Tribunal in the

order dated 30<sup>th</sup> January, 2014 on the reasons for quashing the report also would not survive. In other words, if the Bank institutes any other proceedings to pursue its remedy that may be available under the law, the same shall be decided unmindful of the observations of the Co.Op.Tribunal or even that of the report dated 12.7.2013 under Section 93(1) of the Act."

9. Relying on the aforesaid ratio, admittedly, the writ applicants ceased to be Chairman / Vice Chairman or Managing Directors in the Board of Directors at the relevant time. In view of the fact that the Bank came to be closed and liquidator came to be appointed on 12.11.2004. All the transactions therefor would be for a period before 2004. The show cause notice which came to be issued by the respondent authority is also an undisputedly dated 26.07.2011. Therefore, all the transaction alleged against the writ applicants are beyond the period of five years from the date of show cause notice i.e. 26.07.2011 and also from the date of inquiry report i.e. dated 07.06.2011 This Court is inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. The impugned show cause notice dated 26/07/2011 is accordingly quashed and set aside.
10. For the reason stated above, as back as on 12.11.2004, the writ applicants ceased to be members of bank five years prior to the

initiation of inquiry i.e. 07.06.2012 show cause notice dated 26.07.2011 as contemplated under Section 93 of the Act and in accordance with the ratio as laid down by this Court in the decisions referred to above. In view of this Court, the issuance of show cause notice itself cannot be said to be maintainable. In view of this Court, no purpose would be served by relegating the writ applicant to appear before the respondent authority. The prayers as prayed for by the writ applicants are required to be allowed and the same are allowed. The impugned show cause notice dated 26/07/2011 accordingly is quashed and set aside. Rule is made absolute accordingly.

(VAIBHAVI D. NANAVATI, J)

Pallavi

