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IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 4 OF 2015
IN WP/5032/2012

THE LATUR DISTRICT CENTRAL CO-OPERATIVE BANK LIMITEDLATUR THROUGH ITS MANAGING DIRECTOR. ...APPLICANT
VERSUS
PARVATI GRUHA TARAN CO-OPERATIVE SOCIETY LTD. LATUR AND OTHERS.

....

Mr.V.D.Hon, Senior Advocate a/w Mr.Ashwin V. Hon, Advocate for the Applicant.
Mr.Sachin Deshmukh, Advocate for the Respondent No.1/ Original Petitioner.
Mr.S.A.Ambad, AGP, for the Respondent Nos.2 to 5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st March, 2015

Per Court:

1 By this Review Application, the Applicant/ original Respondent No.5, seeks review of the order dated 28.11.2014 passed by this Court in Writ Petition No.5032/2012.

2 I have heard Mr.Hon, learned Senior Counsel appearing for the Applicant/ Original Respondent No.5 and Mr.Deshmukh, learned counsel appearing for the Respondent No.1/ original Petitioner, at length

on 19.03.2015, 25.03.2015 and today as well.

3 After considering the lengthy submissions of both the sides, the issue seems to be revolving around the word "voter" instead of the word "member", strictly going by the scheme of Section 26 of the Maharashtra Cooperative Societies Act, 1960 (for short "MCS Act"). Rest of his submissions do not convince me that there is an error apparent on the face of the record.

4 Mr.Hon points out the last word "voter" in paragraphs 8 and 12 of the order under review. According to him, Section 26 of the MCS Act needs to be followed in the case of a member and it is only the State Cooperative Election Authority (for short "SCEA") under Section 73-CB that would decide the valid voters since it would be preparing a fresh voters list.

5 Mr.Deshmukh, learned Advocate for Respondent No.1, places reliance upon the observations of this Court in the matter of *Rajan Dinkarrao Pharate and others v/s State of Maharashtra and others* reported in **<u>1997(1) Mh.L.J. 543</u>** and especially paragraph 23 of the said judgment, which reads as under:-

"23. It appears that on 16-10-1995 the Managing Director of

the Shriram Karkhana issued notices to the members calling upon them to pay the increased share money within one month from the receipt of notice. The Board of Directors two days thereafter held its meeting on 18-10-1995 and by its resolution extended time for payment of increased value of share money by one year. The Annual General Meeting of Shriram Karkhana held on 27-3-1996 extended further time to pay balance of the face value of share by 31-3-1997. Can in the aforesaid circumstances it be said that the affected members which were more than 10,000 have not made such payment to the society in respect of membership prescribed by the rules or byelaws of the society. The answer will he simply in the negative. Firstly, the amended byelaws do not ex facie prescribe the increase in the share value to be paid by existing members and particularly within specified time. There is no dispute that all the affected more than 10,000 members were already existing members when the byelaws were amended on 14-7-1995, by the Annual General Meeting and approved by Registrar on 7-9-1995. They had also paid the then prescribed value of share in accordance with the existing byclaws. Even if it be assumed that under amended byelaws, the existing members were liable to pay increased face value of each share, there is no mode prescribed for such payment in the byelaws. The clauses (7) and (8) of the amended byelaws as reproduced above would show that face value of the share was fixed at rupees 2000/- and the mode of payment prescribed that rupees 500/- is to be paid along with application. After information of allotment, share amount of rupees 1000/- is further required to be paid within a period of one month to complete the amount of rupees 1500/- and remaining amount of rupees 500/- is required to be paid within a month after written demand from Board of Directors. The byelaw (8) apparently would not be applicable to the existing members but shall apply to the new applicants. The expression until he has made such payments to the society in respect of membership and, as may be prescribed by the rules or byelaws of such society appearing in section 26 clearly indicates that a person *can be denied from exercising the rights of member of society if he has not made payment to the society in respect of membership as prescribed by rules or byelaws of the society or has not acquired the interest in the society as prescribed but not otherwise. The byelaws do not prescribe the mode of payment of increased share value by existing members and, therefore, the existing members on its face cannot be said to be defaulters on the relevant date i.e. 31-12-1995. Besides that it would be seen that though on 16-10-1995 the Managing Director of Shriram Karkhana issued notices to the existing members calling upon them to pay increased share money within one month from receipt of notice, the Board of Directors in its meeting held on 18-10-1995 by its resolution extended time for payment of increased value of share money by one year. Thus, according to resolution dated 18-10-1995, the time is extended for payment of increased value of share money by members upto 18-10-1996. The cut-off date is admittedly 31-12-1995. The Annual General Meeting of Shriram Karkhana held on 27-3-1996 extended further time to pay balance of the face value of the share by 31-3-1997 and accordingly the time for payment of increased value of share money stands extended to 31-3-1997. If a member is to be denied from exercising the rights of member of society including right to vote then such provision has to be strictly construed. The aforesaid facts, in my view, clearly demonstrate that members whose names were registered in the register of members could not have been excluded from the final list of voters on the ground that they were defaulters under section 26 because they had not made payment of increased share value. Assuming that byelaw No. 8 is applicable to the existing members, then it would be seen that each of the existing members had deposited the value of the existing share amount of rupees 1000/-. They were only required to pay the increased share amount of rupees 1000/-. Clause 2 of the byelaw 8 says that on information of allotment, share amount of rupees 1000/- for each share should be paid within a period of one month so as to complete the amount of rupees 1500/- and under clause 3 balance amount of allotted share was required to be* *paid within a month after written demand from Board of Directors. The Board of Directors have been given right to extend the period mentioned in clauses 2 and 3 of bylaw 8. The Board of Directors by its resolution dated 18-10-1995 extended time for payment of increased value of share money by one year. Thus extension of time by Board of Directors was within its competence and the said amount had not become payable and, therefore, the existing members could not have been held defaulters under section 26. Mr. Gangal, learned special Counsel for State submitted that the amount became due as soon as amended byelaws came into force and, therefore, nonpayment of the increased amount in respect of membership by the existing members disentitled them to exercise of their rights as members. He sought to submit that due means payable which would be apparent from any standard English dictionary. It may be observed that the words due and payable do not find place in the text of section 26. The plain language of section 26 does not support the contention of Mr. Gangal for the reasons already stated above. The reasons given by the Collector in his order dated 18-9-1996 while dealing with points Nos. 2 and 3 are difficult to be appreciated. The Collector has referred to judgment of this Court in (Sugandhilal v. Pannalal) 5, 1964 C.T.D. 305. In Sugandhilals case, it has been held that on the increase in the share value by the society unless the existing members are served with notice to pay balance of the increased amount they cannot be termed as defaulters and their voting rights are not affected. Applying the ratio of Sugandhilal, the Collector overlooked to consider that in the present case that though in the notices given by the Managing Director on 16-10-1995 the existing members were called upon to pay the increased amount of share value within one month but the Board of Directors vide its resolution dated 18-10-1995 extended the time for payment by one year and that in the Annual General Meeting held on 27-3-1996 it has been further extended by 31-3-1997. The existing members thus cannot be held defaulters under section 26 and their voting rights are not affected. In view of the aforesaid reasons, the* *observations made and the order dated 18-9-1996 relating to points Nos. 2 and 3 therein cannot be sustained."*

6 Mr.Deshmukh further places reliance upon the judgment of the Division Bench in the case of *Sanjivraje Vijaysinha v/s Rajan Dinkarrao Pharate* reported in **AIR 1997 Bom. 289** and especially paragraphs 16 and 17 which read as under:-

"16. Now, once the amount payable at the relevant time is already paid and the persons have become members of the Society, it will be difficult to hold that those members ceased to be members of the Society as the increased share amount was not paid on or before 31st December, 1995 which according to the petitioners is the cut-off date for deciding membership. As such, time to make payment towards the increased share value is admittedly extended up to 31st July, 1997. If that is so, then, there is no question of failure on the part of the members to make payment towards membership as prescribed by the bye-law of the Society. The amended bye-law itself provide for making payment on or before a particular date which may be extended by the Board of Directors. In the present case admittedly, the Board of Directors and thereafter, the A.G.M. extended the time up to 31st July, 1997.

17. However, the learned Counsel for the appellants and the learned Counsel appearing for the State submitted that Section 26 is incorporated to infuse discipline in the Society to make the payment towards the membership before exercising the right as members. In our view, this submission would be of no avail in the present case because, admittedly, the persons whose names are excluded were members of the Society; they have paid the amount due at the relevant time and nothing was due for acquisition of the membership at

> *the relevant time when they became members. Therefore, there is no question of disqualifying them from exercising their right as voters as Section 26 is not applicable in the present case. Further, considering Section 26 quoted above, it would be apparent that the member would not be entitled to exercise the right of the membership if he has not made payment in respect of the membership prescribed by the rules or bye-laws of the society. In the context, the phrase "payment prescribed by the rules or the bye-laws of the Society" would mean prescribed membership charges within the prescribed time. Prescribed time for payment of increased amount, under the bye-law, is up to 31st July 1997"*

7 Mr.Deshmukh, therefore, submits that the membership could not have been cancelled on the basis of raising the share value and making the same applicable to the existing members as has been concluded by the learned Single Judge and the Division Bench of this Court in the above cited cases.

8 Mr.Deshmukh has controverted the submissions of Mr.Hon that some issues/ points may have been left out while making his submissions on behalf of the Latur DCC Bank in the Writ Petition. Reliance is placed on the Apex Court judgment in the case of *Haridas Das v/s Usha Rani Bari (Smt.) and others*, **(2006) 4 SCC 78**, to submit that only because some aspects were not argued, would not be a cause for review.

9 Mr.Deshmukh further submits that Respondent No.1 (Original Petitioner) has already paid an amount of Rs.10,000/- (Rupees Ten Thousand) with Tilak Nagar Branch of the Review Applicant/ DCC Bank as due compliance of Section 26 of the MCS Act.

10 Mr.Hon submits that the words “valid member” should substitute the words “valid voter” in paragraphs 8, 9 and 12 of the order under review and prays for a further clarification that this order, having been passed in the peculiar facts of this case, be restricted to the case of the original Petitioner only.

11 Section 26 deals with the membership of an individual or a society and upon due compliance of Section 26, the appropriate authorities have to take a decision as regards inclusion in the fresh list of voters.

12 In the light of the above, the words “valid voter” need to be read as “valid member” in the last lines of paragraphs 8 and 12 only of the order under review, in the light of Section 26 of the MCS Act. Similar request as regards paragraph 9 is refused.

13 Needless to state, the amount deposited by the original

Petitioner (Respondent No.1 herein) will be considered by the competent authority as a step taken by the original Petitioner (Parvati Gruha Taran Cooperative Society Limited) towards compliance of Section 26 of the MCS Act. The competent authority under the MCS Act shall, accordingly decide the case of Respondent No.1 Society in accordance with the provisions of the MCS Act and within a period of 10 days from today since the order passed by this Court under review is dated 28.11.2014.

14 This order shall be restricted to the case of the original Petitioner in view of the peculiar facts and submissions of the parties recorded in the order dated 28.11.2014, which is kept intact, except the observations as regards paragraphs 8 and 12 set out in paragraph No.12 as above.

15 The Review Application is, accordingly, disposed of.

(**RAVINDRA V. GHUGE, J.**)