

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3312 OF 2015

Shobhadevi Deepakrao Shinde

.. Petitioner

Versus

The Returning Officer and others

.. Respondents

**Shri. A. V. Anturkar, Senior Advocate i/by Shri. Sugandh B. Deshmukh,
for the Petitioner.**

Shri. Prashant Bhavake, for the Respondent No.2.

Mrs. Vaishali Nimbalkar, AGP for the Respondent Nos.1 & 3.

CORAM : R.M. SAVANT, J.

DATE : 31st MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 26.03.2015 passed by the District Co-operative Election Officer, by which order the Appeal filed by the Petitioner against the rejection of her nomination form for election to the managing committee of the Nesari Vikas Sanstha Maryadit, Nesari, came to be rejected. The Respondent No.2 herein who is also a member of the said Nesari Vikas Sanstha Maryadit, Nesari took objection to the nomination of the Petitioner on the ground that the Petitioner is a defaulter being the Managing Director of one Nesari Dairy Products Ltd. who has defaulted in

the payment of loan pursuant to which an Award has been passed by the Co-operative Court in the dispute filed by the said Ajara Urban Co-operative Bank Ltd. and which Award is presently put in execution. The said objection raised by the Respondent No.2 was upheld by the Returning Officer who rejected the nomination of the Petitioner on the ground that the Petitioner was defaulter of the said Ajara Urban Co-operative Bank Ltd. and was therefore covered under Section 73CA(1)(c)(ii) of the Maharashtra Co-operative Societies Act, 1960. The Petitioner aggrieved by the rejection of her nomination by the Returning Officer filed an Appeal before the District Co-operative Election Authority. The District Co-operative Election Officer by the impugned order dated 26.03.2015 has rejected the said Appeal.

2. It was sought to be contended by Shri. A. V. Anturkar, the Learned Senior Counsel appearing on behalf of the Petitioner that the default of the said Nesari Dairy Products Ltd. cannot visit the Petitioner in the matter of disqualifying her from contesting the elections to the Nesari Vikas Sanstha Maryadit, Nesari. It is the submission of the Learned Senior Counsel that in the dispute filed by the Ajara Urban Co-operative Bank Ltd., the Petitioner was not even a party and therefore, the Award passed against the said Nesari Dairy Products Ltd. cannot come in the way of the Petitioner from contesting the election to the said Nesari Vikas Sanstha

Maryadit. The Learned Senior Counsel would contend that in terms of Section 73CA(1)(c)(ii), the Petitioner cannot be disqualified on the ground that the company of which the Petitioner is the director is a defaulter as the said provision refers to the person in the singular. On the other hand, the Learned Counsel Shri. Prashant Bhavake appearing for the Respondent No.2 would contend that an Award has been passed against the Nesari Dairy Products Ltd. of which the Petitioner is admittedly a Managing Director and that the Petitioner has executed a bond as a security for payment of the amount which was taken as loan from the said Ajara Urban Co-operative Bank Ltd. by the said company.

3. Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. The provisions of Section 73CA and its various sub clauses or sub sections postulate as to who can be a defaulter vis-a-vis a particular society. In so far as the society of which the elections are to be held i.e. Nesari Vikas Sanstha Maryadit, Nesari, it would be covered by sub Section (ii) of Clause (c) which provides that a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such *anamat* or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society is a

defaulter and is therefore not entitled to participate in the elections. It is not possible to accept the contention urged by the Learned Senior Counsel that since the said provision refers to a person in singular, the default of the company of which the Petitioner is the Managing Director cannot visit the Petitioner. The rigors of the said provision apply in case of a person who is a defaulter. The person obviously would have to cover a situation of the kind that is there in the present case namely the Petitioner is the Managing Director of the company which has taken loan from the said Ajara Urban Co-operative Bank Ltd. and defaulted and therefore, though the Petitioner has not personally taken a loan, the default by the company of which the Petitioner is the Managing Director would obviously come in the way of the Petitioner. If the said interpretation is not applied and the contention urged by the Learned Senior Counsel for the Petitioner is accepted, then the said provision would be turned nugatory as the persons whose companies or institutions are in default would contest the elections notwithstanding the fact that the said companies, institutions are in default of the society. Apart from this, it is also required to be noted that the Petitioner in the capacity of the Managing Director of the said Nesari Dairy Products Ltd. has executed a bond in favour of the Ajara Urban Co-operative Bank Ltd., in my view, therefore, the authorities below i.e. the Returning officer as well as the District Co-operative Election Authority

was right in rejecting the nomination of the Petitioner on the ground that the Petitioner is a defaulter. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]