

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 234 OF 2015

Haresh Motiram Aswani

.. Petitioner

vs.

The Divisional Joint Registrar
Cooperative Societies, Pune Division
Pune and ors.

.. Respondents

Mr. G.S. Godbole a/w. Mr. Drupad Patil for the Petitioner.
Mr. P.G. Sawant, 'B' Panel, AGP for Respondent No.1.
Mr. A.A. Kumbhakoni, Sr. Advocate a/w. Ms Meenakshi Sakhare for
Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 9 JANUARY, 2015

P.C. :-

1] This petition is directed against the order dated 5 January 2015 made by the Divisional Joint Registrar Cooperative Societies, Pune rejecting the petitioner's appeal under Section 152 of the Maharashtra Cooperative Societies Act, 1960 ('said Act') questioning the registration of some amendments to the bye-laws.

2] Mr. Kumbhakoni, learned senior advocate for respondent No.2 – bank, relying upon the decision of the Full Bench of this Court in case of *Shireen Sami Gadiali and anr. vs. Spenta Co-op. Hsg. Soc. Ltd. & anr.*¹, has raised a preliminary objection, to the effect that the petitioner has an alternate and efficacious remedy by

¹ 2011 (3) Mh.L.J. 486

way of preferring a Revision Application under Section 154 of the said Act against the order impugned in this petition.

3] Mr. Godbole, learned counsel for the petitioner submitted that the Full Bench in case of *Shireen Sami Gadiali (supra)*, has merely ruled that remedy of revision under Section 154 of the said Act is available to the aggrieved party as a matter of right. However, it has further held that there is no general rule in which cases such remedy will constitute an alternate remedy to filing of writ petition under Articles 226 and 227 of the Constitution of India. Such question will have to be considered and decided in each case and on the facts and law peculiar to that case.

4] Mr. Godbole submitted that on basis of the amendments effected to the bye-laws, the petitioner's right to contest for election to the Managing Committee of the Society is virtually sought to be taken away. Mr. Godbole submitted that the amendment effected is totally contrary to the cooperative principles and therefore, the Registrar ought not to have allowed the registration thereof. Mr. Godbole further submitted that this Court, in its judgment and order dated 26 December 2014 in Writ Petition Nos.11608 and 11058 of 2014, after detailed consideration of the matter, had not only

granted some limited interim reliefs granted in favour of the petitioner, but further issued directions to the Appellate Authority to expeditiously decide the petitioners' appeals on merits on or before 7 January 2015.

5] Mr. Godbole also pointed out that the election process is under way, and if at this stage, the petitioner is expected to take up the matter by filing the revision proceedings, then in all probabilities, the petitioner would be deprived of his opportunity to contest for the elections which are scheduled on 14 January 2015.

6] Having heard the learned counsel for the parties and perused the records, in my judgment, there is no reason as to why the petitioner ought not to be relegated to the alternate and efficacious remedy by way of filing a Revision Application under Section 154 of the said Act. The circumstance that the election process is underway and therefore remedy of Revision Application may not be efficacious, probably ignores the circumstance that it would not be possible even for this Court to decide this petition one way or other before 14 January 2015. Besides, this is not a case where the Appellate Authority has virtually flouted the directions given by this Court in the aforementioned petitions in the matter of disposal of the

appeals on or before 7 January 2015. The submission of Mr. Godbole that the Appellate Authority has declined to go into the merits of the matter but merely dismissed the appeal as not maintainable, cannot be regarded as correct. The Appellate Authority has merely ruled that the issues raised by the petitioner in the appeal pertain mostly to a dispute which can be addressed under Section 91 of the said Act. This is not to say that the reasoning of the Appellate Authority is either approved or disapproved by this Court. This is only to say that the rejection of the appeal by the Appellate Authority is not merely on ground of maintainability of the appeal. Whether the reasoning of Appellate Authority is right or wrong can always be tested in a revision proceedings under Section 154 of the said Act.

7] This Court in case of *Wadala Shri Ram Industrial Premises Co-operative Society Ltd. Vs. Kotecha and Company, Mumbai and ors.*², has ruled that an order made under Section 13 of the said Act registering an amendment is certainly an appealable under Section 152 of the said Act. However, the scope of appeal before the Appellate Authority will be limited. The Appellate Authority shall have to confine the challenge and examine the matter only in the context of mandatory procedural compliances for carrying out of the

² (2001) 4 Mh.L.J. 616

amendments and its registration. The Appellate Authority cannot widen the scope of such proceedings and pronounce upon applicability or otherwise of the bye-laws, inasmuch as such question legitimately would constitute a dispute under Section 91 of the said Act. At the point of repetition, it is clarified that this Court has not gone into the issue as to whether the reasoning adopted by the Appellate Authority in this particular case is right or wrong. Such issues can always be decided by the revisional Court in exercise of powers conferred upon it by Section 154 of the said Act.

8] Whilst availability of an alternate remedy is certainly not a bar to entertain the petition under Articles 226 and 227 of the Constitution of India, nevertheless it is for the petitioner to make out extra ordinary circumstance as to why the petitioner ought not to be relegated to the alternate and efficacious remedy available under the Statute. In the facts of the present case, no such extra ordinary circumstances have been made out by the petitioner. Accordingly, there is no reason to entertain Writ Petition No.234 of 2015.

9] Insofar as prayer clause (d) in the petition is concerned, the petitioner thereby seeking an appropriate writ to the Appellate Authority to decide M.A.No.105 of 2014.

10] Mr. Godbole submits that the miscellaneous application has not been decided by the Appellate Authority by wrongly observing that there is no appeal accompanying the same. Learned counsel for the parties agree that the said miscellaneous application was filed alongwith the memo of appeal questioning the registration of amendments. As such there was no reason to decline to entertain or decide M.A. No.105 of 2014.

11] Accordingly, the petition is disposed of with the following order:

(a) The petition insofar as it challenges the impugned order dated 5 January 2015 in Appeal No.81 of 2014 passed by the Divisional Joint Registrar, Cooperative Societies, Pune Division, Pune is not entertained. Instead, the petitioner, if he so chooses, is relegated to the remedy of Revision Under Section 154 of the said Act, which is very much available to him;

(b) The Divisional Joint Registrar, Cooperative Societies, Pune Division, Pune is directed to decide M.A.No. 105 of 2014 (Exhibit-R to the petition) as expeditiously as possible and in any case within a period of six weeks from today;

(c) It is clarified that any observations made in this judgment are not intended to affect the merits or de-merits of the matter. The observations were only in the context of declining to entertain the present petition on the grounds of availability of alternate remedy;

(d) Parties to act on an authenticated copy of this order.

(e) Petition is accordingly dismissed.

(M. S. SONAK, J.)

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