

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2857 OF 2015

Shri Pandurang Daji Dhundare]
Age Years, Occ. Agriculturist]
Resident of Rashiwade, Taluka Radhanagari]
District Kolhapur.]..... Petitioner.

Versus

- 1] The State of Maharashtra]
Through its Department of Co-operation]
Mantralaya, Mumbai]
(3 Copies to be served on the office of]
The Government Pleader, High Court,]
Appellate Side (Writ Cell), Mumbai)]
]
2] Divisional Joint Director (Sugar)]
Kolhapur Division, Kolhapur]
]
3] Shri Avinash Tukaram Patil]
Resident of Rashiwade, Tal.Radhanagari]
District Kolhapur]
]
4] Shri Bhoghawati Sahakari Sakhar]
Karkhana Ltd., Shahunagar Parite,]
Taluka Karveer, District Kolhapur]..... Respondents.

Mr. P D Dalvi for the Petitioner.

Mr. S D Rayrikar, AGP, for the Respondent Nos.1 and 2.

Mr. Dilip B Shinde for the Respondent No.3.

Mr. Vikas M Mali for the Respondent No.4.

CORAM : R. M. SAVANT, J.

DATE : 17th July 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made
returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 10/2/2015 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra by which order the Revision Application filed by the Respondent No.3 herein came to be allowed and resultantly the notice dated 20/1/2014 (wrongly mentioned as 21/1/2014 in the impugned order) as also the order dated 9/4/2014 passed by the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur, came to be set aside.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the instant proceedings have arisen out of the application filed by the Petitioner herein for disqualification of the Respondent No.3 on the ground that he has not returned the amounts which has withdrawn from the Respondent No.4 Society within the time frame stipulated in Section 73 (C)(A) of the Maharashtra Co-operative Societies Act (for short herein after referred to as "the said Act"). The Petitioner is the member of the Respondent No.4 Society and has filed the application in question for the disqualification of the Respondent No.3 on 16/12/2013. In the said application the Petitioner has averred as to how the Respondent No.3 stands disqualified. The Petitioner has referred to Section 73 (FF) of the said Act as the provision applicable in the instant case. It is required to be noted that the

said Act came to be substantially modified and the amended provision i.e. Section 73 (FF) is now substituted by Section 73(C)(A) in the Amended Act which has come into force some time in February 2014. The Petitioner accordingly applied for amendment of the said application filed by him which amendment came to be allowed by the authority, pursuant to which a reference to Section 73 (FF) in the application was deleted and a reference to the new provision i.e. Section 73 (C)(A) was made. It appears that prior to the amendment being granted, a show cause notice dated 20/1/2014 came to be issued to the Respondent No.3 by the Regional Joint Director (Sugar) Kolhapur Division, Kolhapur. The said show cause notice was issued under Section 73(C)(A) of the said Act calling upon the Respondent No.3 to show cause. In view of the issuance of the said show cause notice, the Respondent No.3 raised preliminary objection as regards the maintainability of the application filed by the Petitioner on the ground that though in the application a reference to Section 73(FF) is made, the show cause notice has been issued under Section 73(C)(A) of the said Act.

4 The said application was heard by the Regional Joint Director (Sugar) who rejected the said application by his order dated 9/4/2014. The Regional Joint Director (Sugar) has observed that the earlier provision i.e. Section 73(FF) having been replaced by Section 73(C)(A) in the Amended Act and since the application has also been amended, there is no substance in the

said preliminary objection raised by the Respondent No.3.

5 The said order dated 9/4/2014 was carried in Revision by the Respondent No.3 by invoking Section 154 of the said Act. The said Revision Application has been allowed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra and whilst allowing the application the Revisionary Authority has set aside the show cause notice dated 20/1/2014 as also the order dated 9/4/2014 passed by the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur.

6 A reading of the impugned order dated 10/2/2015 passed by Revisionary Authority discloses that the Revisionary Authority has entered into the merits of the case of the Petitioner rather than dealing with the preliminary issue raised by the Respondent No.3 herein. The Revisionary Authority has observed that the provision of Section 73(C)(A) could not be invoked as no notice has been served upon the Respondent No.3 calling upon him to pay the amounts which have been withdrawn by him from the Respondent No.4 Society, and hence without calling upon the Respondent No.3 to pay the said amounts, he could not be declared as a defaulter. Significantly the Revisionary Authority has not dealt with the objection raised by the Respondent No.3 which has been rejected by the Regional Joint Director (Sugar) by his order dated 9/4/2014.

7 In my view, the Revisionary Authority has exceeded his jurisdiction by entering into the arena of the merits of the matter rather than dealing with the issue of maintainability of the application. In my view, therefore, the impugned order would have to be quashed and set aside and is accordingly quashed and set aside. The question that arises is whether the parties are required to be relegated to the Revisionary Authority or the First Authority. Since the preliminary objection to the show cause notice dated 20/1/2014 is taken on the ground that though the application filed by the Petitioner refers to Section 73(FF), the show cause notice is issued under Section 73(C)(A), in my view for the reasons mentioned in the earlier part of this order namely that Section 73(FF) has now been replaced by Section 73(C)(A) in the amended Act, there is no merit in the said preliminary objection. In my view, it would be just and proper to relegate the parties to the First Authority i.e. the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur for the application filed by the Petitioner to be considered on merits. Needless to state that the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur would consider the application filed by the Petitioner on merits and in accordance with law uninfluenced by the earlier order passed by him as well as the impugned order and the instant order. The parties to appear before the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur on 29/07/2015. The Respondent No.3 may file his reply to the show cause notice within 15 days of 29/07/2015. The

contentions of the parties are kept open for being urged before the Regional Joint Director (Sugar), Kolhapur Division, Kolhapur. The Regional Joint Director (Sugar), Kolhapur Division, Kolhapur to decide the application filed by the Petitioner expeditiously. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]