

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

WRIT PETITION NO.2469 OF 2015

Shridhar Ramchandra Kothawade : Petitioner.
Versus
The Satana Merchants Co-operative Bank Ltd.
and others. : Respondents.

Mrs. Aarti P Bhide for the Petitioner.
Mr. Kishor S Patil for the Respondent No.1.
Mrs. Vaishali Nimbalkar AGP for the Respondent Nos.2 and 3.
Mr. Harshad M Inamdar and Mr. S S Inamdar for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 19th March 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the Petitioner's name being removed from the final voters list for the ensuing elections to the Board of Director of Respondent No.1.

2 The Petitioner's name was appearing in the provisional voters list, however, on the objection of the Respondent No.4 herein who is also a member of the Respondent, the Petitioner's name was removed on the ground that he is a defaulter as contemplated under Section 73 CA(1) of the Maharashtra Co-operative Societies Act (for brevity sake herein after referred to as "the said Act") as amended in the year 2013. On the objection of the Respondent No.4, the Petitioner has been termed as defaulter of the Respondent No.1 as also on

the ground that an order under Section 88 of the said Act has been passed wherein the Petitioner is held liable for the loss caused to another society.

3 In so far as the default alleged qua the Respondent No.1 is concerned, it is required to be noted that the Respondent No.1 has issued a letter dated 27/02/2015 stating that the Petitioner has not borrowed any loan etc from the Respondent No.1 and therefore he is not a defaulter. The issue therefore arises is as to whether the Petitioner can be termed as a defaulter in view of the fact that the order under Section 88 of the said Act has been passed against the Petitioner in respect of the society known as Kashinath Dagadu Shirode Nagari Sahakari Patsanstha Maryadit, Satana of which the Petitioner was a Director and in view of the financial irregularities committed therein, an inquiry was held under Section 83 of the said Act and thereafter the order was passed under Section 88 of the said Act. The said default is covered by Section 73CA(1) of the said Act. A contention is sought to be urged on behalf of the Petitioner that Section 73CA(1) and the various sub clauses mentioned therein are to be read disjunctively. It is the submission of the learned counsel for the Petitioner that it is only under subsection 1(i) of Section 73CA of the said Act that a default in respect of any society would be covered by the said provision, however, the rest of the clauses would be applicable in respect of a particular society whose elections are held. In the instant case, since the order passed under Section 88 is not referable to the Respondent No.1, it cannot be said that

the Petitioner is a defaulter qua the Respondent No.1 and is therefore covered by Section 73CA(1) of the said Act. Though the submission in the first blush seems to be attractive but does not hold any water if the provision of subsection 1 of Section 73CA and various clauses therein from (i) to (vii) are read. The reading of the said clauses therefore discloses that the default has to be in respect of any society and not qua the society of which the elections are to be held. The object behind the said provision appears to be that a defaulter should not be permitted to contest the elections of any society. In so far as the instant case is concerned, it is squarely covered by subsection (1)(iii) which posits that any person held responsible under Section 79 or 88 or has been held responsible for payment of costs of inquiry under section 85 is held to be a defaulter. The said provision obviously cannot apply only in respect of a default committed of the society of which the elections are held but applies in respect of a default qua any society in respect of which an order under Section 79 or 88 has been passed. Since in the instant case, an order under Section 88 is admittedly passed against the Petitioner though in respect of some other society and the Petitioner is held liable for recovery of the amount, in my view, upholding the objection raised by the Respondent No.4 herein by the returning officer cannot be found fault with. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]