

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 11014 OF 2014

Mr. Rakesh Nangia and anr. .. Petitioners  
vs.  
The Dy. Registrar of Cooperative  
Societies and ors. .. Respondents

Mr. V. R. Tripathi for the Petitioners.  
Mr. S.D. Rayrikar, AGP for Respondent Nos.1 and 3.  
Mr. Rampal Kohli a/w. S.R. Ronghe for Respondent No.2

**ALONGWITH**  
CIVIL APPLICATION NO. 687 of 2015  
IN  
WRIT PETITION NO. 11014 OF 2014

Sonepal Singh Kohli .. Applicant  
vs.  
Mr. Rakesh Nangia and ors. .. Respondents

Mr. Rampal Kohli a/w. S.R. Ronghe for the Applicant  
Mr. V. R. Tripathi for the Respondent Nos.1 and 2.  
Mr. S.D. Rayrikar, AGP for Respondent Nos. 3 and 4.

**CORAM : M. S. SONAK, J.**  
**DATE : 16 NOVEMBER 2015.**

**P.C. :-**

1] Rule. With the consent of and at the request of learned counsel for the Respondents, Rule is disposed off forthwith.

2] The challenge in this petition is to the order dated 20 May 2014 made by the Dy. Registrar of Cooperative Societies and the order dated 26 November 2014 made by the Divisional Joint

Registrar of the Cooperative Societies, which have the effect of disqualifying the Petitioner Nos.1 and 2 as office bearers of Respondent No.4-Society.

3] As against, the order dated 20 May 2014 made by the Dy. Registrar of Cooperative Societies in purported exercise of powers conferred by Sections 73 and 78 of the Maharashtra Cooperative Societies Act 1960 (said Act), there is no appeal provided under Section 152 of the said Act. However, the Petitioner did institute Appeal No. 127 of 2014 before the Divisional Joint Registrar, Cooperative Societies and the same came to be dismissed by order dated 26 November 2014.

4] In some what similar circumstances, this Court by its order dated 13 February 2015 in Writ Petition No. 9922 of 2014 was pleased to set aside the order made under Section 152 of the said Act impugning disqualification under Section 73C(A) and 78 of the said Act, by observing that no such appeal was maintainable and the proper remedy was institution of a Revision Petition under Section 154 of the said Act. The impugned order was set aside and the matter was remanded to the Revisional Authority to consider the

memo of Appeal as a Revision Petition and to dispose off the same in accordance with law.

5] In the peculiar facts and circumstances of the present case and in light of the decision of this Court in Writ Petition No. 9922 of 2014, the impugned order dated 26 November 2014 is set aside and the matter is remanded to the Divisional Joint Registrar. The Divisional Joint Registrar shall treat the memo of Appeal lodged by the Petitioners as Revision Petition under Section 154 of the said Act and dispose of the challenge to the order dated 20 May 2014, in accordance with law and on its own merits, as expeditiously as possible and in any case within a period of four months from today.

6] The Respondent No.2, in the present case, based upon whose complaint the Petitioners were disqualified, has taken out Civil Application No. 687 of 2015 urging action under Section 340 of Code of Criminal Procedure 1973 (Cr.P.C.). The basis for this Application is that the Petitioners in the petition has made statement that they had in fact instituted Revision Petition before the Divisional Joint Registrar. The so called memo of Appeal appended to the petition also indicates that the same was lodged as a Revision

Petition. On this basis, Respondent No.2 urges action is required to be taken against the Petitioners under Section 340 of Cr.P.C. for having made deliberate mis-statements in the petition.

7] Although, this may not be a case warranting action under Section 340 of the Cr.P.C., this is certainly a matter where costs are required to be imposed upon the Respondents. In the first place the Petitioners chose to invoke a remedy which was unavailable under the law. Having failed the Petitioners have themselves urged that the Appeal was not maintainable and the appropriate remedy was Revision Application under Section 154 of the said Act. The averments in the Petition also indicate that the Petitioners had initially filed a Revision Petition. Same is the position with the memo of Appeal which is styled as memo of Revision Petition. Obviously, therefore, the Petitioners are bent upon taking some advantage of their own wrongs. In view of the the peculiar facts and circumstances off the present case, as also the decision of this Court in Writ Petition No. 9922 of 2014, the impugned order dated 26 November 2014 is set aside. However, this shall be subject to payment of costs of Rs.10,000/-. Such costs to be paid by the Petitioners to Respondent No.2 within a period of four weeks from

today. The payment of such costs shall be a condition precedent. In case, the costs are not paid, then the petition shall be deemed to have been dismissed. In case, the costs are paid, the Divisional Joint Registrar to dispose of the petition already filed by the Petitioners on its own merits and in accordance with law, within a period of four months from today.

8] In the Revision Petition before the Divisional Joint Registrar. Leave is granted to transpose Respondent No.4, i.e., Khar Modern Cooperative Housing Society Limited as Respondent No.3 The Petitioners to carry out the necessary amendment on or before 22 December 2015. The Petitioners are also granted leave to make a formal amendment to the cause title, so as to indicate the petition as Revision Petition. It is made clear that grant of such leave to amend shall not have any bearing upon other connected matters.

9] Parties to appear before the Divisional Joint Registrar on 22 December 2015 and submit authenticated copy of this order. On the said date, the Petitioners to also furnish proof with regard to payment of costs to Respondent No.2. In case, there is any difficulty in the matter of payment of costs, the Petitioners are at liberty to

deposit of such costs before the Divisional Joint Registrar within a period of four weeks from today. Upon such deposit, Respondent No.2 shall be at liberty to withdraw the said costs unconditionally.

10] Rule is made absolute to the aforesaid extent.

11] Accordingly, Writ Petition No. 11014 of 2014 and Civil Application No. 687 of 2015 are disposed of.

12] All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**

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