

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

WRIT PETITION (STAMP) NO.8242 OF 2015

Mr. Aslam A. Khan and others

.. Petitioners

Versus

**The Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division, and others**

.. Respondents

Mr. Rajiv Narula i/by Ms. Kavita P. Shinde, for the Petitioners.

Ms. M. S. Bane, “B” Panel Counsel for the Respondent Nos.1 & 2.

**Mr. P. S. Dani, Senior Advocate i/by Mr. S. M. Sabrad, for the
Respondent No.4.**

CORAM : R.M. SAVANT, J.

DATE : 30th JUNE, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 17.03.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, by which order the Revision Application No.71 of 2015 came to be allowed and resultantly, the order dated 22.05.2014 passed by the Deputy Registrar, Co-operative Societies, MHADA, Mumbai under Section 78(A)(1) read with Section 76(2) of the Maharashtra Co-operative Societies Act (For short “the said

Act”) came to be set aside. The cause for the Deputy Registrar to pass the said order dated 22.05.2014 was the non-compliance of the directions issued by the said authority to the Respondent Nos.4 to 9 herein in the matter of holding a special general body meeting as requisitioned by the Petitioners. The said order dated 22.05.2014 is preceded by a show-cause notice dated 17.02.2014 issued by the Deputy Registrar under Section 78(A)(1) and Section 76(2) of the said Act. The said show-cause notice has been confirmed by the Deputy Registrar by the said order dated 22.05.2014 and the Deputy Registrar in exercise of the powers conferred by Section 78(A)(1) has superseded the managing committee of the society in question and appointed one Shri. Deepak Kekane Co-operative Officer as the Administrator. The Deputy Registrar has also imposed a fine of Rs.5000/- on the members of the managing committee. The said order dated 22.05.2014 passed by the Deputy Registrar was taken exception to by the Respondent Nos.4 to 9 herein who are the managing committee members initially by filing an Appeal under Section 152 of the said Act. The said Appeal was numbered as 74 of 2014. The Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai who heard the Appeal, allowed the same by his order dated 27.09.2014 and resultantly set aside the order dated 22.05.2014 passed by the Deputy Registrar.

2. The said order dated 27.09.2014 was challenged by the Petitioners herein by way of Writ Petition No.9922 of 2014 before a Learned Single Judge of this Court. The principal ground of challenge was that an Appeal was not maintainable in respect of an order passed under Section 76(2) and 78(A) of the said Act as the said Sections do not find a mention in Section 152 which is the appeal provision. Upholding the said ground of challenge a Learned Single Judge of this Court by order dated 24.02.2015 set aside the order passed by the Divisional Joint Registrar and relegated the parties back to the said authority, with a liberty granted to the Respondent Nos.4 to 9 to file an application for converting the said Appeal into a Revision and to be treated as a Revision. On the matter being remanded, the Respondent Nos.4 to 9 accordingly filed the application seeking permission to convert the Appeal into a Revision and for the same to be treated as a Revision. The said application came to be allowed by the Divisional Joint Registrar who thereafter proceeded to hear the Revision Application which was numbered as 74 of 2014. The Divisional Joint Registrar took into consideration the rival contentions as indicated above and by the impugned order dated 17.03.2015 allowed the Revision Application and set aside the order dated 22.05.2014 passed by the Deputy Registrar, Co-operation Societies, MHADA.

3. The gist of the reasoning of the Revisionary Authority is that

the Deputy Registrar has totally overlooked and mis-interpreted Sections 76 and 78(A) of the said Act which are separate and independent proceedings. The Revisionary Authority has also observed that there is a breach of the principles of natural justice. Whilst recording the first finding as regards the interpretation of Section 76 and 78(A) is concerned, the Revisionary Authority alluded to the fact that though Section 76(2) does not contemplate any fine or penalty to be imposed on a committee member the same has been done by the Deputy Registrar whilst exercising the powers under Section 76. The Revisionary Authority accordingly as indicated above set aside the order dated 22.05.2014 for the reasons mentioned in the impugned order dated 17.03.2015. In so far as the order passed by the Deputy Registrar dated 22.05.2014 is concerned, the operative part of the same discloses that the Deputy Registrar has chosen to exercise powers under Section 78(A) and superseded the managing committee of the society in question. The question that is posed is whether the said course of action was available to the Deputy Registrar in exercise of the powers under Section 78(A). A reading of the said provision especially the fourth proviso to Section 78(A)(1) of the said Act indicates that nothing in the said Sub Section namely the supersession of the committee shall apply to any society which has not taken any loan or financial assistance in terms of cash or kind or guarantee of the

Government. In my view, in observing that there is mis-interpretation of Section 78(A), the Revisionary Authority was in fact referring to the said proviso which prohibits any action of supersession taken against any society which does not have any Government share holding or financial assistance.

4. In so far as the action under Section 76 is concerned, the Revisionary Authority was right in holding that under Section 76(2) penalty can only be imposed on the officer who is the servant of the society. The managing committee members do not come within the ambit of the said Sub Section 2 and it is in the said context that the Revisionary Authority held that Section 76(2) was erroneously applied by the Deputy Registrar. In my view, having regard to the statutory provisions as above the order passed by the Revisionary Authority i.e. Divisional Joint Registrar cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

5. However, it is clarified that the dismissal of the Writ Petition would not preclude the Petitioners from applying to the Deputy Registrar for action to be taken under Section 76 of the said Act in respect of the non-compliance of the directions relating to the holding of the special general body meetings, if any such application is made, needless to state

that the same would be considered on its own merits and in accordance with law by giving proper opportunity to the parties.

[R.M. SAVANT, J]