

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

WRIT PETITION St. NO.12467 OF 2015

Krypton Towers CHS Ltd. & Anr.

..Petitioners

Vs.

Krypton Construction Pvt Ltd. & Ors.

..Respondents

Mr. Devendranath Joshi for the Petitioners

**Mr. C. D. Mehta a/w Mr. Lalan Gupta i/b M/s. Dhruve Liladhar & Co. for
the Respondent No.1**

Mr. S. D. Rayrikar AGP for the Respondent Nos.2, 3 and 4

CORAM : R. M. SAVANT, J.

DATE : 1st July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 24-3-2015, passed by the Divisional Joint Registrar Co-operative Societies, Mumbai Division Mumbai, by which order, the application for amendment of the Appeal came to be allowed, the Appeal in question came to be admitted and the parties were directed to maintain status-quo in respect of the impugned orders till the next date of hearing. The Appeal being Appeal No.28 of 2015, has been filed by the Respondent No.1 herein who are the developers of the property in question which has been developed under Regulation No.33(7) of the Development Control Regulations 1991.

2 The Petitioner No.1 is the society of the flat purchasers. The Petitioners filed an application before the Competent Authority under Section 10(1) of the Maharashtra Ownership of Flats Act, 1963, on the ground that no steps were taken for registration of the society by the Respondent No.1. The said application filed by the Petitioners came to be allowed by the Competent Authority and the District Deputy Registrar by order dated 22-1-2015. The District Deputy Registrar directed the authorities under the Maharashtra Co-operative Societies Act, to register the society. The Assistant Registrar has accordingly thereafter issued the registration certificate dated 27-1-2015. The Respondent No.1 filed an Appeal before the Divisional Joint Registrar, Co-operative Societies, against the said order dated 22-1-2015 passed by the Competent Authority and the District Deputy Registrar. Since the registration of the Petitioner No.1 took place thereafter the Respondent No.1 moved an application for amendment of the Appeal so as to include a challenge to the registration certificate dated 27-1-2015.

3 In so far as the Appeal is concerned, an objection was raised by the Petitioner to the maintainability of the Appeal and the jurisdiction of the Divisional Joint Registrar to entertain the Appeal against the order dated 22-1-2015. The Divisional Joint Registrar though recorded the said objection as regards the maintainability of the Appeal and his jurisdiction, has not ventured

to decide the said objection. The Divisional Joint Registrar by the impugned order as indicated above has allowed the amendment and has also granted status-quo in respect of the impugned orders. Since an objection regarding the maintainability of the Appeal and the jurisdiction of the Divisional Joint Registrar was raised, it was incumbent upon the Divisional Joint Registrar to address the said objection at the inception. However, that has not been done so.

4 The Learned Counsel for the Respondent No.1 Mr. Mehta points out that the Appeal is kept for hearing tomorrow i.e. 2-7-2015 by the Divisional Joint Registrar. If that be so, the Divisional Joint Registrar is directed to frame the issue of maintainability of the Appeal and his jurisdiction to try the Appeal and try the said issue at the outset before proceeding to deal with the Appeal on merits. The Divisional Joint Registrar may hear and decide the Appeal latest by 22-7-2015 by giving proper opportunity to the parties. It is expected of the Divisional Joint Registrar who is exercising the Appellate Jurisdiction to deal with the contentions raised by the parties on the said issue of jurisdiction. The contentions of the parties are kept open for being urged before the Competent Authority. It is clarified that since a direction has been issued for disposal of the Appeal within a particular time frame, the impugned order has not been interfered with. Needless to state that the Appeal would be decided on its own merits and in accordance with law uninfluenced by the impugned order. With

the aforesaid directions, the Writ Petition is disposed of.

6 The parties to act upon a copy of this order duly authenticated by
the Court Shirestedar.

[R.M.SAVANT, J]