

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

WRIT PETITION (STAMP) NO.20116 OF 2015

Shri. Purshottam Karbhari Rakibe and others .. Petitioners

Versus

The District Deputy Registrar and others .. Respondents

Mr. P N. Joshi, for the Petitioners.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.3 to 5.

CORAM : R.M. SAVANT, J.

DATE : 3rd AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 10.07.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik, by which order the application for condonation of delay in filing the Appeal came to be rejected. The said Appeal was directed against the order dated 29.04.2013 passed by the District Deputy Registrar, Co-operative Societies, Nashik, approving the amendment to the bye laws of the Respondent No.2 society. The reasons mentioned by the Petitioners in their application for condonation of delay did not commend acceptance to the Divisional Joint Registrar. The Divisional Joint Registrar has accordingly rejected the application for condonation of delay. It appears that the elections to the Respondent No.2 society have taken place and completed yesterday i.e.

02.08.2015 and hence, in so far as bye laws are concerned, the amended bye law was applied and the election was conducted on the said basis.

2. The Learned Counsel for the Petitioners states that the Petitioners intend to challenge the amended bye law i.e. bye law introduced by the amendment which stipulates the eligibility criteria for being a member of the managing committee adopting the remedy under Section 91 of the Maharashtra Co-operative Societies Act. Since the remedy by way of Section 91 is a substantive remedy available to a member of a society, in my view, since only the application for condonation of delay filed by the Petitioner in the instant Appeal has been rejected, the same cannot come in the way of the Petitioner from invoking the said remedy under Section 91 of the said Act and the same would therefore have to be tried on its own merits and in accordance with law uninfluenced by the impugned order. Hence, by clarifying that notwithstanding the rejection of the application filed by the Petitioners for condonation of delay in the Appeal filed by the Petitioners against the order dated 20.03.2015, in the event the Petitioners invoke the jurisdiction under Section 91 of the said Act, the said proceeding would be tried by the concerned Court on its own merits and in accordance with law uninfluenced by the impugned order. With the aforesaid observations, the Writ Petition is disposed of.

3. It is also clarified that if the Petitioners are aggrieved by the result of the elections, they are free to adopt appropriate remedy for questioning the result of the elections. The said proceeding is also to be tried on its own merits and in accordance with law and uninfluenced by the instant order.

[R.M. SAVANT, J]