

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO. 9922 OF 2014**

Mr. Aslam A. Khan & Ors.

....Petitioners.

Vs.

The Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division & Ors.

....Respondents.

Mr. Rajiv Narula a/w Mr. Pramod Bhosale i/by Ms. Kavita P. Shinde for the Petitioners.

Ms. Gauri Rao, AGP for Respondent Nos. 1 and 2.

Mr. N.V. Walawalkar, Senior Advocate a/w Mr. Suresh M. Sabrad for Respondent Nos. 3 to 9.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 13 FEBRUARY 2015.

ORAL JUDGMENT:-

Rule returnable forthwith. Heard finally.

2 The learned counsel appearing for the Petitioners, without going further to the merits of the matter, raised a preliminary issue with regard to the maintainability of the Appeal filed under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short, “the MCS Act”). The Divisional Joint Registrar-Respondent No.1, by impugned order dated 20 September 2004, set aside order dated 22 May 2014 passed by the Deputy Registrar-Respondent No.2, arising

out of Section 78-A read with Section 76(2) of the MCS Act.

3 The brief facts of the case are as under:-

On 26 May 2013, requisitions raised by the members for calling Special General Body Meeting (for short, “SGBM”). On 18 July 2013, since the meeting was not called upon, complaint of requisitionist Respondent No.2, called upon Respondent No.3-Society to give reasons for not calling SGBM. On 7 August 2013, the Deputy Registrar called upon Respondent No.3 to 9 to call SGBM. On 30 September 2013, the Petitioners informed Respondent No.1 and 2 that Managing Committee did not hold SGBM. On 26 October 2013, the Petitioners once again complained to the Registrar that no SGBM held. On 18 October 2013 and 18 November 2013, Respondent No.2 called upon Respondent Nos. 4 to 9 to give reasons for not holding SGBM. On 27 November 2013, Respondent No.2 passed order under Section 76(3) of MCS Act, appointing Mr. Dhanesh Dongre as his representative to hold SGBM. On 30 November 2013, Petitioners raised the query under Right to Information Act (for short, “the RTI Act”) if any action is taken against the Managing Committee. On 23 December 2013, the reply given by Respondent No.2 found to be

unsatisfactory.

4 On 17 January 2014, Appeal filed against the reply. On 17 February 2014 and 20 March 2014, Respondent No.2 issued show-cause notice to Respondent Nos. 4 and 9 under Section 76 r/w 78-A of the MCS Act. Between March 2014 to May 2014, Respondent Nos. 4 to 9 filed three replies dated 9 March 2014, 23 March 2014 and 12 May 2014. On 22 May 2014, after hearing the matter on four different dates, Respondent No.2 dismissed the Managing Committee i.e. Respondent Nos. 4 to 9. On 20 September 2014, Respondent No.1 passed impugned order and set aside order dated 22 May 2014. Hence, the present Petition.

5 There is no serious issue that an Appeal against an order under Sections 76(2) and/or 78-A, is not available under Section 152 for want of those two Sections, specifically in sub-section (1) of Section 152 of the MCS Act, which is reproduced as under:-

“152. Appeals :

(1) An appeal against an order or decision under sections 4,9,11,12,13,14,17, 18, 19, 21, 21A, 29, 35, 77A, [78, 79, 85,88 and 105 including against an order

for paying compensation to a society] shall lie,-

- (a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government.*
- (b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.:*

[provided that, no order of stay shall be issued in respect of the recovery of the dues under the award issued by the Liquidator unless fifty per cent. Of the amount stated in the award is deposited with the society by the Appellant.]”

6 The statute if provides no statutory appeal, the Respondents-Authorities' and/or the concerned party's Appeal, if any, required to be disposed of as not maintainable and after giving an opportunity to all the parties concerned. The objection so raised by the Petitioners before Respondent No.2 at the time of hearing of the Appeal filed by Respondent Nos. 4 to 9, however, was not considered and the impugned order was passed, which is the subject matter of the present Petition, whereby even on the merits, order is passed against the Petitioners.

7 The statute, if not provides any statutory Appeal, there is

no question of entertaining such Appeal. This in no way debar the parties to proceed and/or file appropriate proceedings including Revision if any, under Section 154 of the MCS Act. Additional factor in the background is that Section 78-A has been inserted by the Maharashtra Ordinance 16 of 2013 dated 13 August 2013, w.e.f. 14 February 2013. Section 152, which provides Appeal, is also amended by the same provisions (ordinance 16 of 2013 dated 13 August 2013, w.e.f. 14 February 2013), but these two Sections 76 (2) and 78-A are not inserted to be part of Appeal against an order or the decision under those Sections. Everybody need to respect the statutory provisions, including the Authorities.

8 Therefore, in the interest of justice and to give opportunity to all the parties, I am inclined to dispose of the present Writ Petition by setting aside the order as passed by Respondent No.2 entertaining the Appeal under Section 152, for want of specific provisions against the order under Sections 76(2) and 78-A of the MCS Act. However, liberty is granted to the parties to approach Respondent No.2-Divisional Authority to make their respective submissions, including on the maintainability of the Appeal and/or treating the Appeal so

filed by Respondent Nos. 4 to 9, as a Revision. The concerned Respondent No.2 to pass order in accordance with law after hearing both the parties.

9 Considering the above background, and the fact that the Appellate Court at the time of passing impugned order has reversed earlier order dated 22 May 2014 and granted interim relief dated 10 July 2014 which was in force till the date of impugned order, therefore, as I am inclined to set aside the order for the reasons so recorded, to avoid further complications, however the interim order passed by the Appellate Court shall continue for further four weeks from today. Respondent No.2-Appellate/Revisional Authority to decide the rival contentions in this regard, in accordance with law within four weeks.

10 Resultantly, the following order:-

ORDER

- a) Impugned order dated 20 September 2014 is quashed and set aside.
- b) Appeal is restored to the file of Deputy Registrar

-Respondent No.2, for reconsideration.

- c) Respondent No.2 to pass order in accordance with law after hearing both the parties within four weeks from today.
- d) All points are kept open.
- e) Rule made absolute accordingly. No costs.

(ANOOP V. MOHTA, J.)