

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

DATE OF DECISION: MAY 11, 2015

Mayfield Garden Resident Welfare Society, Gurgaon

.....Petitioner

VERSUS

State Registrar of Societies of Haryana, Chandigarh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S. K. Hooda, Advocate,
for the petitioner.

Mr. Vikram Singh, Advocate for
Mr. Manoj Kaushik, Advocate,
for caveator-respondent No.4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court, impugning the order dated 04.03.2015 (Annexure P-20) passed by the State Registrar of Societies of Haryana-respondent No.1 on the ground that the same is without jurisdiction as the appeal preferred by respondent No.4 is beyond the limitation prescribed under Section 79(3) of the Haryana Registration and Regulation of Societies Act, 2012 (for short, “the Societies Act”).

Counsel for the petitioner submits that the limitation for challenging an order passed by the District Registrar is 60 days and thereafter, there is a provision for condonation of delay upto a maximum period of 60 days. An appeal, therefore, filed beyond the period of 120 days

cannot be entertained by the Appellate Authority i.e. the State Registrar of Societies of Haryana-respondent No.1.

Notice of motion.

On the asking of Court, Mr.Arjun Singh, Assistant Advocate General, Haryana, accepts notice on behalf of respondent Nos.1 to 3.

Mr.Vikram Singh, Advocate, puts in appearance on behalf of Mr.Manoj Kaushik, Advocate, who is counsel for caveator-respondent No.4.

It is the contention of counsel for the petitioner that initially an order dated 25.05.2012 (Annexure P-10) was passed by the District Registrar of Firms and Societies, Gurgaon-respondent No.3, by which the application for change of names of office bearers of Mayfield Garden Resident Welfare Society, Gurgaon, was accepted and certificate, Annexure P-11, was issued to the petitioner-Society.

The order dated 25.05.2012, permitting the change of office bearers of the petitioner-Society was challenged by respondent No.4 by filing appeal, Annexure P-6, in the year 2013. Counsel for the petitioner states that assuming the said appeal was filed in January 2013, still the same would be much beyond the period of limitation prescribed under Section 79 (3) of the Societies Act. He refers to the contents of the appeal to submit that no explanation whatsoever is given for the delay in approaching the Appellate Authority i.e. the State Registrar of Societies of Haryana-respondent No.1 but in the said appeal of the petitioner, which was entertained as Appeal No.37 of 2013, an order dated 15.04.2013 (Annexure P-17) was passed, whereby the same was allowed and the impugned order was set-aside.

The petitioner-Society challenged this order by filing Civil Writ Petition No.8649 of 2013 (Mayfield Garden Resident Welfare Society Vs. the State Registrar of Societies, Haryana and another), which was finally disposed of by order dated 09.01.2015, setting-aside the impugned order dated 15.04.2013 (Annexure P-17) and the matter was remanded to the State Registrar of Societies of Haryana-respondent No.1 with a direction to the said authority to afford an opportunity to the petitioner inviting it to file its objections, which were to be made within four weeks from the date of order. Respondent No.1 was further directed that on receipt of such a response, he was to take a decision in accordance with law expeditiously.

Petitioner, in pursuance of the order passed in the writ petition, filed his reply/objections dated 04.02.2015 (Annexure P-18) in Appeal No.37 of 2013 (Ashok Gulia Vs. District Registrar Firm and Societies, Gurgaon), in which apart from other objections, a specific plea was taken by the petitioner that the appeal being time barred, could not be entertained. The said appeal was finally decided by respondent No.1 by order dated 04.03.2015 (Annexure P-20), wherein despite the objection with regard to limitation being taken by the petitioner and so referred to and mentioned in Para 3 but there is no discussion, dealing with this aspect and instead the Appellate Authority proceeded to decide the appeal on merits. This, the counsel contends, is not in accordance with law as the appeal of respondent No.4 could not have been entertained at all by respondent No.2 in the light of Section 79 (3) of the Societies Act. Further, he has relied upon a Full Bench judgement of this Court reported as State of Haryana Vs. Hindustan Machine Tools Limited and others, 2015 AIR (Punjab) 45, where it has been held that an appeal can be admitted upto the period which has been

prescribed under the statute, if any special statute prescribed certain period of limitation, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Indian Limitation Act, 1963 (hereinafter referred to as “the Limitation Act”) shall stand excluded. He contends that since the statute itself provides for a maximum period upto which the delay can be condoned and the appeal preferred by respondent No.4 was beyond the said period, the same could not have been entertained and was liable to be rejected on this ground itself.

Counsel for respondent No.4, on the other hand, contends that in the light of the order dated 09.01.2015 passed by this Court in the writ petition preferred by the petitioner, this aspect was not pressed by the petitioner's counsel at the time of hearing and, therefore, there was no occasion for the Appellate Authority to go into the aspect with regard to limitation. He, therefore, contends that the order passed by respondent No.1 is in accordance with law. He, however, could not dispute the fact that the appeal preferred by respondent No.4 was only in the year 2013.

This contention of counsel for respondent No.4 cannot be accepted in the light of the order, which has been passed by this Court on 09.01.2015 in the writ petition, which reads as under:-

“The only point that arises for consideration is whether the decision could have been taken on the issue of validity of election without affording an opportunity to the petitioner. It bears out admittedly that such notice had not been given. On this short ground, the impugned order Annexure P-17 requires to be set aside and accordingly set aside. The matter is remanded to the 1st respondent who will afford an opportunity

to the petitioner inviting it to file its objections, which shall be made within four weeks from today. On such a response, the 1st respondent will take a decision in accordance with law expeditiously.”

A perusal of the above would show that the Court had set-aside the impugned order on the ground that the petitioner in the said writ petition was not heard by respondent No.1 while deciding the appeal. The position is further clarified that the petitioner was given an opportunity to file objections to the appeal, which liberty was availed of by it and objections were filed to the appeal, where a specific plea regarding limitation was taken and the same has also been referred to in Para 3 of the impugned order but still there is no discussion with regard to the same. It, thus, cannot be said that question of limitation was not taken by the petitioner in the earlier writ petition filed by it or was decided by this Court by order dated 09.01.2015.

The basic argument raised by counsel for the petitioner is that the appeal could not have been entertained by respondent No.1 in the light of Section 79(3) of the Societies Act. Said Section reads as under:-

“79(3) Any appeal shall be filed within a period of sixty days of the issue of the impugned orders. The appellate authority may entertain an appeal beyond this period upto a maximum of another sixty days on sufficient grounds for condonation of delay being shown.”

A perusal of the above would leave no manner of doubt that the appeal, at the first instance, could be filed within a period of 60 days of the issuance of impugned orders. The Appellate Authority could entertain an

appeal beyond the said period upto maximum of another 60 days and that too on showing sufficient grounds for condonation of delay. In the appeal, Annexure P-16, which has been preferred by respondent No.4, no averment with regard to the reasons for not approaching the Appellate Authority within the time prescribed under the statute, has been mentioned. Before the Appellate Authority, the appeal could have been filed/entertained within a period of 60 days from the date of passing of the impugned order and since there is no explanation for the delay, there was no question of condoning the delay at all, what to say upto 60 days, which is the maximum permissible period under the statute. Since admittedly the appeal has been filed beyond the period which is prescribed under the statute i.e. Section 79 (3) of the Societies Act, the appeal could not have been entertained by the State Registrar of Societies of Haryana-respondent No.1.

As is apparent from the Full Bench judgement of this Court in Hindustan Machine Tools Limited's case (supra), the provisions as contained in the special statute, which prescribe certain period of limitation, cannot be further extended by resorting to the provisions as contained in the Limitation Act and the provisions under the special statute shall prevail over the provisions as contained under Section 5 of the Limitation Act.

In view of the above, the present writ petition is allowed. The impugned order dated 04.03.2015 (Annexure P-20) passed by the State Registrar of Societies of Haryana-respondent No.1 is hereby quashed, being without jurisdiction.

May 11, 2015
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(AUGUSTINE GEORGE MASIH)
JUDGE