

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2409 OF 2016**

Rialto co-operative Housing Society Ltd. & Ors

..Petitioners

Vs.

Mr. Purshottam V. Raheja & Ors.

..Respondents

**Mr. P. S. Dani, Senior Advocate a/w Ms Sapana S Kukreja for the
Petitioners**

**Mr. Ravi Kadam Senior Advocate a/w Mr. Ashish Kamat i/b Ranjit & Co.
for the Respondent Nos. 1 to 5**

Mr. V. N. Dhingreja a/w Mr. Ravish Mishra for the Respondent Nos.6 to 8

CORAM : R. M. SAVANT, J.

DATE : 14th MARCH, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 11-2-2016 passed by the Learned Member of the Maharashtra State Co-operative Court, Mumbai, by which order the Revision Application filed by the Petitioners came to be dismissed, resultantly the order dated 7-1-2016 passed by the Trial Court came to be confirmed.

2 The Petitioner No.1 society is the Opponent No.1 in the dispute in question being case No.CC/I/418 of 2014 (old case No.CC/II/201 of 2013). The said dispute has been filed inter alia for the reliefs concerning the resolutions passed in the Managing Committee of the Petitioner No.1 society,

the resolutions passed in the Special General Body Meeting of the Petitioner No.1 society and the resolutions passed in the Annual General Body Meeting of the society, which resolutions are dated 10-1-2013, 8-6-2013 and 1-9-2013. An objection was raised as regards the maintainability of the dispute on the ground that pursuant to one of the resolutions passed the proceedings under Section 101 of the Maharashtra Co-operative Societies Act (for short the said Act) have been initiated and secondly on the ground that in view of the consent terms filed in respect of Flat No.6 and the acceptance by the same by the resolution of the Managing Committee, the dispute in question would not lie as the same is barred by virtue of Order XXIII Rule 3A of the Civil Procedure Code. The Co-operative Court has considered the said objection by applying the principles analogous to Section 9A of the Civil Procedure Code and has by its order dated 7-1-2016 ruled that it has the jurisdiction to entertain and try the dispute for the reasons mentioned in the said order. The Co-operative Court has rejected the contention that the dispute in respect of Flat No.6 and three parking spaces allotted by the Respondent No.1 society would not lie within Section 91 of the said Act and held that the dispute is a pure dispute between a member and society regarding the flat and parking space which can be adjudicated under Section 91 of the said Act.

3 The Order passed by the Co-operative Court dated 7-1-2016 was taken exception to by way of filing a Revision being Revision Application No.6

of 2006, before the Appellate Court where a statement came to be made on behalf of the Petitioners that the application filed under Section 9A is restricted to its claim to challenge to the dispute on the limited issue as to whether the Co-operative Court has jurisdiction under Section 91 of the said Act to grant relief in regard to challenging the resolutions approving the accounts when the recovery proceedings pertaining to the same are pending before the Deputy Registrar under Section 101 of the said Act. The said objection was negated by the Revisionary Court on the ground that the challenge is to the resolutions passed by the society approving the said expenses and therefore the challenge was very well maintainable under Section 91 of the said Act.

4 Since the proceedings under Section 91 of the said Act can be said to be substantive proceedings wherein the legality and validity of the resolutions can be gone into. In my view, both the orders passed by the Co-operative Court as well as the Revisionary Court i.e. the Co-operative Appellate Court are well founded and do not merit any interference at the hands of this court in its writ jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]