

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2470 OF 2016

Smt. Sugandha A. Patil and ors. .. Petitioners
vs.
Divisional Joint Registrar and ors. .. Respondents

Mr. Prathamesh B. Bhargude i/b Vaishali Choudhari for the
Petitioners.
Ms Aparna Vhatkar, AGP for Respondent Nos.1, 2 and 4.
Mr. S.S. Shah for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 14 JUNE 2016.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith. In any case, by order dated 25 February 2016, it was made clear that endeavour shall be made to dispose of this petition finally, at the stage of admission.

2] The challenge in this petition is to the order dated 5 February 2016 made by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur holding that Appeal No. 84 of 2015 instituted by the petitioners is not maintainable before him (Divisional Joint Registrar), but will lie before the State Government in terms of the provisions contained in Section 152 of the Maharashtra Cooperative Societies Act, 1960 (MCS Act) .

3] Mr. Bhargude, learned counsel for the petitioners, by reference to the provisions contained in Section 152(1)(b) of the MCS Act, has submitted that in the present case the impugned order against which Appeal No. 84 of 2015 was instituted by the petitioners was made by the Assistant Registrar and therefore, appeal lay to the Registrar. In support of this submission, Mr. Bhargude placed reliance upon the decision of the Full Bench of this Court in case of *Shireen Sami Gadiali and anr. Vs. Spenta Co-op Hsg. Soc. Ltd. and ors. - 2011 (3) Mh.L.J. 486*.

4] On the other hand, learned counsel for the respondent No.3, submitted that since the order which is impugned in Appeal No. 84 of 2015 was made by the person authorised by the Registrar in terms of Section 88 of the MCS Act, the Registrar, in order to obviate any challenge on the ground of potential bias, has held that the appeal will lie before the State Government. In these circumstances, learned counsel for the respondents submitted that there is no necessity to interfere with the impugned order.

5] The rival contentions now fall for determination.

6] The order impugned by the petitioners in Appeal No. 84 of 2015 has been admittedly made by the authorised officer, holding the rank of an Assistant Registrar. Further, it is the case of the petitioners that such an order has been made under Section 88 of the MCS Act.

7] Section 88 of the MCS Act reads thus:

88. Power of Registrar to assess damages against delinquent promoters, etc.

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to [the date of commencement of such audit or date of order for inquiry inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

[Provided that, proceedings under this sub-section, shall be completed by the authorised person within a period of two years from the date of issue of order by the Registrar:

Provided further that, the Registrar may, after recording the reasons therefor, extend the said period for a maximum period of six months]

(2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible”.

8] From the aforesaid, it is clear that where the Registrar satisfied that the parameters specified in sub-section (1) of Section 88 of the MCS Act are *prima facie* fulfilled, the Registrar may either himself or a person authorised by the Registrar may frame charges against such person or persons as referred to in sub-section (1) of Section 88 of the MCS Act, and after giving a reasonable opportunity to such person or persons concerned, make orders as contemplated by sub-section (1) of Section 88 of the MCS Act. This means that the orders under Section 88(1) can be made by the Registrar himself or by person authorised by him. Even sub-section (2) of Section 88 provides that the Registrar or the person authorised under sub-section (1) in making any order under the said

section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued. This is also an indication that the order under Section 88 (1) or 88(2) can be made by the Registrar himself or person authorised by him.

9] Section 152 of the MCS Act reads thus:

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 society] shall lie,—

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the 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.]

(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.

(3) An appeal under sub-section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

[(3A) The Appellate Authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the

decision and final hearing of the Appeal:

Provided that, if any interim order has been passed by the Appellate Authority without hearing the other side, the Appellate Authority shall decide such application within a period of three months and pass the necessary orders on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.]

(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act ; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions”.

10] From the bare reading of the aforesaid provision, it is quite clear that an appeal against an order or decision under Section 88 of the MCS Act is appealable under Section 152 of the MCS Act. Sub-clause (1) of Section 152 of the MCS Act provides that the appeal will lie to the State Government, if the order is made or sanctioned or approved by the Registrar. Sub-clause (b) further provides that if an order or decision under Section 88 of the MCS Act is made or sanctioned by any person other than the Registrar, Additional or Joint Registrar, then the appeal will lie to the Registrar.

11] In ***Shireen Gadiali (supra)***, at paragraph '9', the Full Bench of this Court has analysed the provisions contained in Section 152 of

the MCS Act though, in a slightly different context. However, therein, it is held that if the order is made by an authorised authority or officer, who is sub-ordinate to the Registrar, Additional Registrar of Joint Registrar, then appeal lies to the Registrar.

12] In view of the aforesaid, since the orders/ decisions which was appealed by the petitioners in Appeal No. 84 of 2015, was made by the Assistant Registrar, who is obviously an officer sub-ordinate to the Registrar, the appeal against the same would lie before the Registrar in terms of Section 152(1) (b) of the MCS Act. The Divisional Joint Registrar, was therefore, not right in making the impugned order and declining to entertain the petitioners' Appeal No. 84 of 2015.

13] Insofar as, the issue of potential bias is concerned, there arises really no occasion to allege such bias. In this case, the Registrar, apart from authorising the Assistant Registrar to take action in terms of Section 88 of the MCS Act, has not himself addressed or adjudicated into the material on record for the purposes of action under Section 88 of the MCS Act. That apart, Mr. Bhargude, learned counsel for the petitioners, on the basis of

instructions from the petitioners, has made a specific statement that they have no apprehensions of bias and shall not raise any such issue, in case Appeal No. 84 of 2015 is taken up and disposed of by the Registrar. Mr. Bhargude submitted that in fact, it is the case of the petitioners that the Registrar is the competent authority to take up and decide said appeal.

14] In view of the aforesaid, the apprehension with regard to bias certainly does not arise or in any case, does not persist. The statement made by Mr. Bhargude in this regard is accepted.

15] Accordingly, the impugned order dated 5 February 2016, is set aside. The petitioners' Appeal No. 84 of 2015 is restored to the file of Divisional Joint Registrar of the Cooperative Societies. The Divisional Joint Registrar of Co-operative Societies is directed to entertain and dispose of the said appeal, in accordance with law and on its own merits, as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

16] Parties to appear before the Divisional Joint Registrar Cooperative Societies, Kolhapur Division, Kolhapur on 28 June 2016 at 3.00 p.m. and produce authenticated copy of this order.

17] Rule is made absolute in this petition to the aforesaid extent. There shall, however, be no order as to costs.

18] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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