

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

WRIT PETITION NO.2829 OF 2016

Siddheshwar CHS Ltd.

.. Petitioner

Versus

Mr. Sunil S. Apte and others

.. Respondents

WITH

CIVIL APPLICATION NO.682 OF 2016

IN

WRIT PETITION NO.2829 OF 2016

Sunil S. Apte

.. Applicant

IN THE MATTER BETWEEN

Siddheshwar CHS Ltd.

.. Petitioner

Versus

Mr. Sunil S. Apte and others

.. Respondents

Mr. S. A. Abhyankar, for the Petitioner.

Mrs. M. S. Bane, "B" Panel Counsel for the Respondent Nos.2 to 4.

Mrs. Sumedha Rao, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 4th APRIL 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 24.02.2016 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By the said order, the Revision

Application No.220 of 2015 came to be dismissed. It has been mentioned in the opening paragraph of the impugned order that the Applicant Society (Petitioner herein) has filed the Revision Application challenging the order dated 02.07.2015 passed by the Deputy Registrar, Co-operative Societies, R/N Ward, Mumbai, under Section 78A of the Maharashtra Co-operative Societies Act, 1960 (For short "the said Act"). By the said order dated 02.07.2015, the managing committee of the Petitioner society has been superseded. It seems that the Petitioner society had filed two proceedings against two orders which are bearing the same date i.e. 02.07.2015, one is the order directing the Petitioner society to enroll the Respondent No.1 herein as a member of the society. The second order is the order superseding the managing committee. Both the orders are passed by the Deputy Registrar, Co-operative Societies, R/N Ward, Mumbai. In fact against both the orders an Appeal lies under Section 152 of the said Act, though Section 78A has not been specifically mentioned in the said provision, however Section 78 is mentioned therein. In Section 78A there is a reference to Section 78. It is required to be noted that Section 78A has been introduced by an amendment in the year 2013. Since the Appellate Authority and Revisionary Authority is the same i.e. the Divisional Joint Registrar, the said authority has wrongly treated the Appeal filed by the Petitioner against the order passed under Section 78A

as a Revision instead of an Appeal. Hence, the impugned order is referable to Section 152 of the said Act and in view thereof a Revision would lie before the State Government against the said order under Section 154 of the said Act. An objection has also been raised on behalf of the Respondent No.1 on the maintainability of the above Petition in view of the statutory remedy available before the State Government by way of a Revision. Hence, by relegating the Petitioner to the said remedy of Revision under Section 154 of the said Act, the above Petition to stand disposed of. In the above Petition there is an ad-interim order which is operating since 04.03.2015. The said ad-interim order would operate for a further period of three weeks within which time the Petitioner to file the Revision before the State Government and obtain interim orders from the State Government. However, till the application for interim orders is considered by the Revisionary Authority, the managing committee would function with the same restrictions as mentioned in the order dated 25.01.2016 passed by a Learned Single Judge of this Court (M. S. Sonak, J) in Writ Petition No.1085 of 2016.

2. In view of the disposal of the above Writ Petition, the Civil Application for vacating the ad-interim relief does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]