

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5076 OF 2014

Smt. Philomena Alex Falcao .. Petitioner
vs.
The Divisional Joint Registrar
Mumbai Divisiona, Mumbai and anr. .. Respondents

Mr. Atul Singh for the Petitioner.
Mr. A.R. Metkari, AGP for Respondent No.1.
Mr. Sameer N. Patil for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 21 JANUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 25 February 2014, made by Divisional Joint Registrar Cooperative Societies, Mumbai (Respondent No.1) allowing partly the appeal instituted by Respondent No.2 and remanding the matter to the Deputy Registrar for reconsideration in light of observations contained therein.

2] The learned counsel appearing for Respondent No.1 and Respondent No.2 submit that as against the impugned order, the Petitioner has remedy of revision under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (said Act) and in view of availability of such statutory remedy, this petition may not be entertained.

3] Section 154 of the said Act reads thus:

154. REVISIONARY POWERS OF STATE GOVERNMENT AND REGISTRAR.

(1) *The State Government or the Registrar, suo moto or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If, in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.*

(2) *Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.*

(2A) *No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or certificate issued by Liquidator under section 105 unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues;*

Provided that, in case of such revision where revisional authority has granted a stay to the recovery of dues, the authority as far as may be practicable disposed of such revision application as expeditiously as possible but not later than six months from the date of the first order.

(3) *No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.*

(3A) *The revisional 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 Revision Application.*

Provided that, if any interim order has been passed by the revisional authority without hearing the other side, the revisional 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) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

4] Further, Section 152 of the said Act, which deals with appeals under the said Act in sub-clause '4', provides as follows;

(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 provision.

5] Upon conjoint reading of Section 152(4) and 154 of the said Act, it is quite clear that the Petitioner has alternate and efficacious remedy available to him by way of institution of revision against the impugned order. Therefore, there is no necessity to entertain the present petition. Rather, it would be appropriate if the Petitioner is relegated to avail such alternate statutory remedy.

6] The learned counsel for the Petitioner, on basis of instructions from the Petitioner, states that within a period of two weeks the Petitioner will institute such revision petition against the impugned order. If revision petition is indeed instituted within two weeks from today, the revisional authority is directed to hear, decide and dispose of the same as expeditiously as possible and in any case within a period of three months from the date the same is filed, on merits and in accordance with law. Considering that the Petitioner was pursuing the present petition, the revisional authority is requested not to advert to the issue of limitation in instituting the revision petition. However, all other issues, including the issue of limitation in challenging the *locus standi* of Respondent No.2 are kept open.

7] Further for a period of two weeks from today, the ad-interim relief already granted by this Court shall continue. Thereafter, it shall be for the Petitioner to obtain appropriate interim orders from the revisional authority. Again, the revisional authority shall decide such matters on their own merits and in accordance with law.

8] It is made clear that this Court has not adverted to the merits of the matter and therefore all contentions of all parties are kept open.

9] The petition is disposed of in the aforesaid terms.

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

(M. S. SONAK, J.)