

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6429 OF 2013

Shri Swami Samartha Co-operative
Housing Society (B) Limited .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. S. S. Kanetkar for Petitioner.
Mr. S. D. Rayrikar – AGP for State - Respondent Nos. 1, 2 and 4.
Mr. Mr. Saket Mone i/b. Mr. S. Joshi for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE : 20 JUNE 2016

P.C :

1] The challenge in this petition is to the order dated 18 May 2013 made by the Divisional Joint Registrar, Co-operative Societies, dismissing the petitioner's appeal against the order dated 1 September 2010 made by the Deputy Registrar, Co-operative Societies, Pune. The impugned order has been made in exercise of the appellate powers vested in the Divisional Joint Registrar, in terms of section 152 of the Maharashtra Co-operative Societies Act, 1960 (said Act).

2] As against the impugned order, the petitioner has remedy of instituting a revision under section 154 of the said Act. Mr. Kanetkar, the learned counsel for the petitioner has submitted that in the present case the order dated 1 September 2010 made by the Deputy Registrar, Co-operative Societies was *ex facie* without

jurisdiction. Therefore, Mr. Kanetkar has submitted that this Court, may not relegate the petitioner to avail alternate remedy. Mr. Kanetkar has submitted that non entertaining of writ petitions on the grounds of availability of alternate remedy is only a self imposed restriction and one of the well known exception against the exercise of such restriction is where the impugned order is *ex facie* without jurisdiction.

3] In the present case, the petitioner has alternate remedy by way of instituting a revision in terms of section 154 of the said Act. The revisional authority is also empowered to address itself on the issues of jurisdiction. Besides the exercise of appellate jurisdiction under section 152 of the said Act, cannot be regarded as an exercise, which was *ex facie* without jurisdiction. The issue as to whether the order dated 1 September 2010 is without jurisdiction or not, can always be examined by the revisional authority. No exceptional circumstances exist in this matter for deviating from normal rule in the context of availability of alternate remedy.

4] Mr. Kanetkar has pointed out that the limitation for instituting a revision is two months. Mr. Kanetkar has also pointed out that the present petition was instituted within two months from the date of the impugned order dated 18 May 2013.

5] Mr. Mone, the learned counsel for the respondent no. 3 – contesting respondent, on basis of instructions has stated that in case their objection with regard to alternate remedy is upheld, the respondent no. 3 will not raise the issue of limitation, provided of course, the revision petition is instituted within reasonable time. Mr. Mone also submitted that necessary directions may be issued in the matter of expeditious disposal of said revision petition.

6] Taking into consideration the aforesaid, the present petition is not entertained. The petitioner is however granted liberty to institute revision petition under section 154 of the said Act. In case, said revision petition is instituted within four weeks from today, the revisional authority is directed to dispose of the same as expeditiously as possible and in any case within a period of six months from the date the same is actually lodged. The statement made on behalf of the respondent no. 3 that the issue of limitation will not be raised is recorded and accepted. Accordingly, the revisional authority is directed to dispose of the revision petition on its own merits and in accordance with law. Even otherwise, it is to be noted that the petitioner has been *bona fide* pursuing the present petition which was instituted well within the period of limitation prescribed for the purpose of lodging of revision petition.

7] The order dated 1 September 2010 issued by the Deputy Registrar shall remain stayed for a period of eight weeks from today. The petitioner is at liberty to apply for interim relief before the revisional authority, at the stage when the petitioner institutes the revision petition. Needless to add that the petitioner shall furnish copy of the revision petition as well as application for interim relief to the respondent no. 3 at least one week in advance. The revisional authority to decide on the issue of interim relief, again, on its own merits and without in any manner being influenced by the circumstance that this court has granted or continued the interim relief.

8] All contentions of all parties on merits are left open to be decided by the revisional authority.

9] The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)