

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

**LETTERS PATENT APPEAL NO. 365 OF 2011
IN
WRIT PETITION NO. 655 OF 2011
WITH
CIVIL APPLICATION NO. 141 OF 2012
IN LPA NO. 365 OF 2011**

Kirti Kumar Suvarna

... Applicant.
(Org. Petitioner)

V/s.

Shimpoli Niranjana Co-op. Hsg.Soc. Ltd.,
and Others.

... Respondents.

Mr. Satish Upadhyay, Advocate for the Applicant.
None for the Respondents.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 04th OCTOBER, 2016

P.C. :

1 Heard learned counsel appearing on behalf of the
Appellant. None appears on behalf of the Respondents.

2 The Appellant/Petitioner is aggrieved by the order
passed by the learned single Judge dated 27th June, 2011 in the
writ petition. By the said order, for the reasons mentioned in
writ petition no. 550 of 2011, the writ petition no. 655 of 2011

was dismissed. The controversy raised in writ petition no. 550 of 2011 and in the present case is similar.

3 Brief facts of the case are that the appellant / petitioner is a member of the respondent no.1 Society. It appears that one Mogaveera Co-operative Bank initiated certain proceedings to recover certain dues from the respondent no.1 Society which were not attributable to the acts of the present petitioner. Some members of the respondent no. 1 Society had obtained loan from the said Mogaveera Co-operative Bank and had committed default. The Society, therefore, in the General Body Meeting took a decision and it was unanimously agreed that all the members of the Society would repay the amount borrowed from the said bank and an individual member would contribute so that the Bank dues would be repaid by the society. Since this contribution was not paid by the the petitioner, the proceedings under section 101 Maharashtra Co-operative Societies Act, 1960 were initiated against the Petitioner. Recovery certificate was issued by the Assistant Registrar which was confirmed by the Joint Registrar. Learned single Judge has observed that the Petitioner did not challenge the decision taken by the Co-operative Society in its General Body Meeting held on 07.10.2001 under section 91 of the Maharashtra Co-operative Societies Act. The unanimous decision taken by the Society in its General Body Meeting is binding on all the members of the

Society. Instead of challenging the said decision, the appellant/petitioner challenged the order passed under section 101 of the Act.

4 In our view the learned single Judge has rightly assessed the facts of the case and observed that the Petitioner was not entitled to challenge the resolution passed by the society in the proceedings under section 101 of the Act. The learned single Judge has by a well reasoned order dismissed the writ petition and upheld the orders passed the Assistant Registrar and confirmed by the Joint Registrar. We do not see any reason to interfere with the said order of the learned single Judge while exercising writ jurisdiction under the Letters Patent Appeal.

5 However, we are of the view that the Appellant should not be deprived of his right to challenge the Society's decision to recover dues from all the members. It is an admitted position that the Appellant/Petitioner had not taken the loan from the Mogaveera Co-operative Bank but he had taken loan from the Bank of India and he has repaid the said loan by paying the installments in time. Prima facie, therefore, the Society could not have compelled the other members to pay the dues of the defaulting members, who had not taken loan from the Mogaveera Co-operative Bank. The Petitioner therefore, has a right to recover the dues either from the

Society or from such defaulting members. If such an application is filed under section 91 of the Act, the Co-operative Court may consider the application on merits and shall not insist or dismiss the application on the ground of delay in approaching the court. The Petitioner honestly and sincerely was pursuing the remedy elsewhere and therefore, could not approach the concerned court in time.

6 Appeal is disposed of in the aforesaid terms. All contentions of the appellant/petitioner in the appeal are kept open.

7 The civil application 141 of 2012 does not survive in view of disposal of the appeal.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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