

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2582 OF 2015

Jaywant Industrial Premises
Cooperative Society Ltd

.. Petitioner

vs.

Divisional Joint Registrar,
Cooperative Societies, Mumbai
Division, Mumbai and ors.

.. Respondents

Mr. Pravin Samdani, Sr. Advocate with Mr. Vishal Kanade and Ms
Nikita Bhansali i/b Wadia Ghandy & Co. for the Petitioner.

Mr. Vineet Naik, Senior Advocate with Mr. Bhavik Manek & Ms
Kausar Banatwala i/b Mr. Tushar Goradia for Respondent Nos.3 & 4.

CORAM : M. S. SONAK, J.
DATE : 19 JANUARY 2016.

P.C. :-

1] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the judgment and order
dated 31 July 2015 made by the Divisional Joint Registrar,
Cooperative Societies, Mumbai Division, Mumbai (Respondent No.1)
in Appeal No. 159 of 2014 setting aside the judgment and order
dated 8 August 2014 made by the Deputy Registrar Cooperative
Societies, Mumbai Division, Mumbai (Respondent No.2). The Deputy
Registrar had approved the expulsion of Respondent No.3 from the
Petitioner-Society.

3] There is no dispute that the impugned judgment and order dated 31 July 2015 has been made by the Divisional Joint Registrar (Respondent No.1), in exercise of appellate jurisdiction conferred upon him by Section 152 of Maharashtra Cooperative Societies Act, 1960 (said Act). As against the impugned judgment and order made by Respondent No.1, there is an alternate remedy available to the Petitioner by way of institution of revision petition before the State Government in terms of Section 154 of the said Act. The Full Bench of this Court in case of *Shireen Sami Gadiali and anr. Vs. SPENTA Cooperative HSG. Soc. Ltd. and ors.*¹ has held that remedy under Section 154 of the said Act is available to an aggrieved party is a matter of right. The Full Bench has also held that mere availability of an alternate statutory remedy is not a bar for exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. The usual rule, in the matter of non-entertainment of petition under Articles 226 and 227 of the Constitution of India, where alternate statutory remedy is available is a rule of self discipline and therefore, it is for the High Court to consider in each case, whether in a particular case availability of revisional jurisdiction is an alternate remedy to the jurisdiction of this Court under Articles 227 and 226 of the Constitution of India or not. In paragraph 14, the Full Bench

1 2011 (3) Mh.L.J. 486

has illustrated certain instances, where despite the availability of alternate statutory remedy, this Court, may exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. However, ultimately, the Full Bench has concluded that such question will have to be considered and decided in the facts and circumstances peculiar to the case under consideration.

4] In paragraph 43 of this petition, the Petitioner has averred thus:

43. The Petitioner has no other alternative efficacious remedy and has hence preferred this Writ Petition before this Hon'ble High Court for the reliefs prayed for herein. The Petitioner states that the remedy of a revision provided under Section 154 of the Act would not be alternative efficacious remedy as the Impugned Order passed by Respondent No.1 is without jurisdiction and in excess of its powers under Section 152 of the Act, resulting in manifest injustice and hence invocation of powers of this Hon'ble Court under Articles 226 and 227 of the Constitution of India is not prohibited. Furthermore, with a view to avoid multiplicity of proceedings, the Petitioner, who has simultaneously filed three other Writ Petitions before this Hon'ble Court the subject matters of which are interlinked, is also filing the instant Writ Petition.

5] The mere circumstance that the impugned order in the opinion of the Petitioner may be without jurisdiction and in excess of powers conferred under Section 152 of the said Act, is not sufficient, not to relegate the Petitioner to avail alternate statutory remedy available under the said Act. The issue as to whether the impugned

order is indeed in excess of jurisdiction or not, besides, being a debatable issue, is also, an issue which can very well be decided by the Revisional Authority, considering the scope and import of the provisions contained in Section 154 of the said Act. This is also not a case where this petition is required to be entertained in order to avoid multiplicity. No extra ordinary circumstances have been demonstrated for deviating from the normal rule of self discipline that a writ petition will not be entertained where alternate and efficacious remedy under the Statute is available to the Petitioner.

6] Accordingly, present petition is not entertained as the Petitioner has an alternate and efficacious statutory remedy of challenging the impugned judgment and order made by Respondent No.1 by instituting a revision application before the State Government in terms of Section 154 of the said Act. Such revision was required to be instituted within 60 days from the date of impugned judgment and order. However, there is power conferred in the State Government to condone delay upon sufficient cause being made out. In this case, the Petitioner has been *bona fide* pursuing the present petition and therefore, it is clearly not a case, that Petitioner has been indolent in the matter. Besides, Mr. Naik, learned senior advocate appearing for Respondent Nos.3 and 4, on basis of

instructions from the said Respondents, has made a statement that in case the Petitioner institutes a revision application within a period of four weeks from today, the said Respondents will not raise the issue of limitation. In the facts and circumstances of the present case, it will therefore, be appropriate if the Revisional Authority is directed to hear and decide the revision application, if instituted by the Petitioner within a period of four weeks from today, on its own merits and in accordance with law, without adverting to the issue of limitation. The Revisional Authority is directed accordingly.

7] 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 for adjudication by the Revisional Authority.

8] The Revisional Authority is requested to decide the revision application as expeditiously as possible.

9] Rule is made absolute in the aforesaid terms. There shall however, be no order as to costs.

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

(M. S. SONAK, J.)