

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2658 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 3 August 2015 made by the Divisional Joint Registrar,
Cooperative Societies (Respondent No.1) in Revision application No.
236 of 2015 instituted by Respondent Nos. 3 and /or 4. The
operative portion of the impugned order reads thus:

ORDER

1] *The Revision Application No. 236/2016 is allowed.*

2] *The impugned order in Roznama dated 17/07/2015 of*

the Respondent Deputy Registrar is hereby set aside in respect of rejection of the prayer of the Applicant herein to accept the part payment of the Respondent society's due in arrears.

3] The Respondent No.1 society is directed to accept the amount as paid by the Applicant and issue appropriate receipts.

4] The Respondent No.2 Deputy Registrar shall proceed further to decide the Respondent Society's claims/remaining recoverable dues in arrears as per the provisions of law.

5] No order as to costs.

3] Mr. Samdani, learned senior advocate for the Petitioner, contends that the only Respondent No.3, i.e., proprietary concern of M/s. B.D. Jogani & Co., was the member of the society and therefore, there is no question of accepting any amounts from Respondent No.4, which is a partnership firm. On the other hand, Mr. Naik, learned senior advocate appearing for Respondent Nos.3 and 4, submits that it is the Respondent No.4 is the real member of the Petitioner-Society, particularly as one of the partners of Respondent No.4, was a member of the Managing Committee of the Petitioner-Society for the two consecutive terms.

4] In my judgment, the issue as to whether Respondent No.3 or 4 are real members of the Petitioner-Society need not come in the way of the Petitioner-Society accepting, at least admitted amounts from either of the parties. No doubt, such acceptance can be without

prejudice to the rights and contentions of both the parties. In this regard, therefore, with certain clarifications and modifications, there is no necessity to interfere with the impugned order, which primarily directs the Petitioner-Society to accept certain amounts towards the society dues.

5] Accordingly, the impugned order is modified and it is clarified that Respondent No.3 and/or 4 are at liberty to pay not only the amounts which they had initially offered to pay, but also further amounts, which in their opinion are due and payable to the Petitioner-Society. This shall be done within a period of four weeks from today. The Petitioner-Society shall accept the said amounts and issue a receipt in the name of Respondent No.3. However, it is clarified that the issuance of such receipt shall be without prejudice to the rights and contentions of all the parties including, in particular the Respondent Nos.3 and 4, who contend that the real member of the society is Respondent No.4. Therefore, it is clarified that the issue of who is real member of the Petitioner-Society shall not be linked to and shall not be determined on the basis of such without prejudice payment and acceptance of dues. Such issue is specifically kept open, particularly as the same is being adjudicated

in some other Forum, alongwith several other issues raised in the context of expulsion of Respondent No.3 from the Petitioner-Society.

6] The impugned order is therefore, upheld with clarifications/modifications as aforesaid.

7] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)

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