

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2581 OF 2015
AND
WRIT PETITION NO. 2977 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, in both the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] Considering the issues involved and the order which is proposed to be made, both these petitions can be conveniently disposed of with a common order.

3] The petitioner-society has instituted proceedings against Respondent No.3 for recovery of certain amounts styled as arrears

towards maintenance etc. The proceedings are said to be instituted under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (said Act).

3] The Deputy Registrar, Cooperative Societies (Respondent No.2), in the aforesaid proceedings made certain orders which are recorded in the Roznama dated 7 July 2015. These orders are really hard to decipher, but appear to be in the nature of certain procedural directions. Respondent No.3 and/or 4 instituted revision application before the Divisional Joint Registrar Cooperative Societies (Respondent No.1) purported to be aggrieved by the orders made on 7 July 2015. The Respondent No.1, by impugned order dated 3 August 2015, has set aside the orders dated 7 July 2015 and purported to issue certain directions as to the manner in which the proceedings instituted by the Petitioner under Section 101 of said Act are required to be disposed of. Hence, present petitions.

4] In Writ Petition No. 2581 of 2015, the impugned order dated 3 August 2015, virtually defers further proceedings under Section 101 of the said Act, until, the Petitioner, by following the due process of law, sorts out the issue as to whether real member of the Society is the proprietary concern M/s. B.D. Jogani & Co. (Respondent No.3)

or the partnership firm M/s. B.D. Jogani & Co. (Respondent No.4). The impugned order, also takes note of the order dated 31 July 2015, made by Respondent No.1 itself, on the issue of expulsion of Respondent No.3 has a member of the Petitioner-Society.

5] In my judgment, the resolution of dispute with regard to recovery of alleged dues, need not be linked with or deferred, until the resolution of dispute as to whether Respondent No.3 or Respondent No.4 are real members of the Society. Ultimately, the dues if any, of the Petitioner-Society are required to be received by the Petitioner-Society. Since there is dispute as to status, such dues can be paid by Respondent Nos.3 and/or 4 and received by the Petitioner-Society without prejudice to their respective positions insofar as the said dispute is concerned. However, if there are indeed certain dues, then the same have to be paid to the Petitioner-Society and there is no need for such payment to be postponed pending resolution of dispute as to which is real member of the Petitioner-Society. Therefore, the order dated 3 August 2015 in Writ Petition No. 2581 of 2015 is formally set aside. However, it is made clear that setting aside of this impugned order is by no means vindication of the position of either parties, insofar as dispute as to who is correct member of the Society. The impugned order is set aside merely

because the Society should not be disabled from recovering its alleged dues, until resolution of such dispute. Therefore, it is directed that Respondent No.2 should proceed with the application under Section 101 of the said Act and in terms thereof, determine if any dues are indeed recoverable and quantum of such dues and thereafter make appropriate orders on the basis of such determination. Obviously, all contentions of all parties on the merits and maintainability etc. are kept open and the Respondent No.2 shall adjudicate upon them and decide the same in accordance with law and on their own merits.

6] In Writ Petition No. 2977 of 2015, the challenge is to the order dated 3 August 2015 made by Respondent No.1 i.e., Divisional Joint Registrar, Cooperative Societies, Mumbai Division, to the extent that such order suggest that there is requirement of proving the documents referred to or appended to the application under Section 101 of the said Act in terms of Rule 86(E) of the Maharashtra Cooperative Societies Rules, 1961(Said Rules).

7] As against, procedural directions contained in Roznama dated 7 July 2015 made by the Respondent No.2, there was really no necessity of entertaining any revision application and making any

directions. In any case, it would have sufficed, if Respondent No.2 was directed to dispose of the proceedings under Section 101 of the said Act, by complying with the provisions of Rule 86-E of the said Rules, which *inter alia*, require the Society to prove the contents of the application and also deal with the contention of the defences. The Rule itself provides that no cross-examination of any of the parties shall be permitted in the summary proceedings under Section 101 of the said Act. The constitutional validity of the said Rule has been upheld by the Division Bench of this Court in case of ***Top Ten, a Partnership Firm and anr. Vs. State of Maharashtra and ors.- (2012) 2 Bom CR 647***. The observations in the context of the provisions contained in Rule 86-E of the said Rules, will obviously bind the judicial or quasi judicial authorities discharging functions under the provisions of the said Act. Therefore, the impugned order dated 3 August 2015 is set aside on the grounds that it was unnecessary to make such an order in exercise of revisional jurisdiction. In substitution, Respondent No.2 is directed to dispose of the proceedings under Section 101 of the said Act, by complying with the requirements set out therein, as also by adhering to the procedure set out in Rule 86-E of the said Rules. All contentions of all parties, *inter alia*, on merits as well as on maintainability are kept

open as aforesaid.

8] In matters of this nature, the revisional jurisdiction should not be routinely exercised, particularly in matters relating to procedural orders and direction. In any case, the revisional jurisdiction should not be exercised so as to thwart the determination of main issue on merits. It must be noted that consequent upon a final determination, in case any of the parties are aggrieved, they can always avail the substantive remedies in the form of substantive appeals provided by Section 152 of the said Act.

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

10] It is once again clarified that this Court has not adverted to the merits of the matter and therefore all contentions of all parties on merits as well as maintainability are kept open. The Respondent No.2 shall make every endeavour to dispose of the main petition, as expeditiously as possible.

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

(M. S. SONAK, J.)