

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

WRIT PETITION NO.5251 OF 2017

Mr.Bharat Lalwani and Ors

..Petitioners.

Vs

Divisional Joint Registrar and Ors

.. Respondents

Mr.Vishwajeet Sawant i/b Abhishek Bhadang a/w Ashish Mehta
a/w Sona Bundeally a/w Shruti Khandelwal i/b Ashish Mehta,
Advocates for Petitioners.

Mr. Sachi Kankal, A.G.P for Respondents no.1 and 2.

Mr. Rajiv Patil, Senior Advocate, a/w Yogesh Yadnik, Advocate for
Respondent no.3.

CORAM : R.G.KETKAR,J.

DATE : 03/05/2017

PC:

1. Heard Mr.Vishwajeet Sawant, learned counsel for the petitioners, Mr. Sachin Kankal, learned A.G.P for respondents no.1 and 2 and Mr. Rajiv Patil, learned counsel for the respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 20.3.2017 passed by respondent no.2, Deputy Registrar, Cooperative Societies, R/South Ward, Mumbai as also the Judgment and order dated 27.4.2017 passed by the first respondent -Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By these orders, the authorities below rejected the no confidence motion moved by the petitioners against the third respondent as Secretary of Raghuleela Mega

Mall Kandivali (W) Premises Co-operative Society Ltd, Poisar, Kandivali (W), Mumbai (for short, 'society').

3. It is the case of the petitioners that 14 members were elected to the Managing Committee of the society. Out of 14 members, 4 members have resigned from the membership leaving 10 members in the Managing Committee. On 2.3.2017, requisition to call a special meeting of the committee to consider motion of no confidence against the third respondent was submitted to the second respondent. The requisition was duly signed by Chairman of the society as also was duly attested by Notary. Requisition was signed by 9 members out of 10 members. In pursuance thereof, respondent no.2 issued notice on 7.3.2017 for convening meeting on 20.3.2017 at 4.30 pm under his Chairmanship. Accordingly, meeting was convened on 20.3.2017 for considering the motion of no confidence against the third respondent. Respondent no.2 proceeded on the premise that there are 14 members of the managing committee. As per the requirement, the motion has to be passed by majority of 2/3rd members entitled to vote and sit at the meeting. Out of 14 members, 8 have voted in favour of the motion. In view of the requirement of 2/3rd majority of the total number of committee members, the motion has to be carried by 10 members. Accordingly, he rejected the motion by order dated 20.3.2017. As required by Rule 57A (7)(k), he also issued certificate in Form

M-19 certifying that the motion of no confidence is rejected. Aggrieved by this decision, the petitioners preferred Revision Application before the first respondent under Section 154 of the Act. By the impugned order, respondent no.1 dismissed the Revision Application.

4. In support of this Petition, Mr.Sawant submitted that Deputy Registrar did not reject the requisition on the ground of noncompliance of Rule 57A(1)(e) of the Maharashtra Co-operative Societies Rules,1961 (for short, 'Rules). He also did not reject the requisition on the ground that it is not duly attested as per that Rule. In fact, in pursuance of the requisition, he convened meeting on 20.3.2017. He submitted that in the order dated 20.3.2017, respondent no.2 proceeded on the footing that there are 14 members in the managing committee. Respondent no.2 failed to appreciate that out of 14 members, 4 members have tendered resignation and the said fact was intimated by none other than the third respondent himself to the second respondent. At the time of meeting, even 1 member had resigned leaving behind the strength of the managing committee to 9. Out of 9 members, 8 members voted in favour of the motion of no confidence. Thus, the motion of no confidence is passed by 2/3rd majority of the total number of the committee members. He submitted that respondent no.2 also did not reject the motion on the ground that requisition was submitted in noncompliance of

Rule 57A(1)(e).

5. He submitted that aggrieved by this decision, the petitioners preferred Revision Application. For the first time, the Divisional Joint Registrar considered whether the requisition issued by the petitioners was in conformity with Rule 57A(1)(e). He submitted that Rule 57A(1)(e) lays down that the requisition shall be accompanied by signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government. In the present case, the requisition was signed by the Chairman of the society who is the Chief Executive Officer of the society and thus there is substantial compliance of Rule 57A(1)(e). That apart, at any rate it is duly attested by Notary. In any case, that was not the ground on which respondent no.2 rejected the motion of no confidence.

6. Mr.Sawant further submitted that if the Court is inclined to take a view that there is noncompliance of Rule 57A(1)(e), liberty may be reserved to the petitioners to move the motion of no confidence within one year. In other words, it may be clarified that bar under section 73-1D(7) will not come in the way of the petitioners in bringing fresh motion of no confidence within one year from the date of rejection of the motion.

7. On the other hand, Mr.Patil supported the impugned orders.

He invited my attention to Minutes of the meeting dated 20.3.2017. In that Minutes, objections raised by the third respondent that the requisition is not attested as per Rule 57A(1)(e) was specifically recorded. He further submitted that a perusal of the requisition shows that the said requisition is not signed by Shri Kamlesh Jain at sr.no. 5 and as far as at sr.no.7 Gaurang Thumar is concerned, the name and signature are struck out. In other words, the requisition is not submitted by 9 members of the committee. He submitted that in the present case, attestation as contemplated by Rule 57A(1)(e) was very much required. He further submitted that the said requisition is not in conformity with Rule 57A(1)(e). He relied upon the decision of this Court in Santukarao Ragnath Sakhare Vs. The State of Maharashtra, 1996(2) Bom.C.R. 618 and in particular paragraph 5 thereof as also the decision of this court in Jayprakash Vs State of Maharashtra, 2001(3) Mh.L.J. 787.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, on 2.3.2107 the petitioners have moved the requisition to call special meeting of the committee to consider the motion of no confidence under Rule 57A(1)(e) of the Rules. A perusal of this requisition shows that one Mr. Kamlesh Jain at sr.no. 5 has not signed the said requisition. The name of Gaurang Thumar appears at sr.no.7.

However, the same portion is struck out. In other words, though there are names of as many as 9 members of the committee, the same is moved by 7 members as against 9 members. That apart, a perusal of the requisition shows that the Chairman of the society has signed the said requisition and it was made before Notary public. Rule 57A(1)(e) reads thus:

“57A. Motion of no-confidence against the officers of the society-

(1) The requisition to call the special meeting of the committee of a society to consider a motion of no confidence against the President, Vice President, Chairman, Vice Chairman, Secretary, Treasurer or other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by:-

(e) signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.”

A perusal of Rule 57A (1)(e) shows that requisition has to be accompanied by the signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government. Mr. Sawant submitted that the very fact that the Chairman of the society has signed the requisition amounts to substantial compliance of Rule 57A(1)(e). In other words, he has equated the signature of the Chairman of the society with attestation by the Chairman of the society. It is not possible to accept this

submission. The said question was considered by this Court in the case of Santukarao (supra). In paragraphs 5 and 6, it was observed thus:

“5. Rule 57A of the Maharashtra Co-operative Societies Rules, 1961 in sub-rule 1 (r) requires that the signatures of the members of the committee on the requisition be duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government. There is no such attestation on the requisition impugned. Shri. A. H. Kasliwal, learned Counsel appearing on behalf of the respondent contended that the requirement of sub-rule 1(e) is not mandatory in nature. Language of this sub-rule does not use imperative words like "shall" or "must". Therefore, the rule is held to be directory. The purposes of this rule is to get satisfied about the truth of the signatures and if the Registrar is satisfied by any other evidence that the signatures are genuine, then attestation is not necessary. Shri Kasliwal further contended that even assuming that the requirement is mandatory, there is sufficient compliance of the requirement inasmuch as one of the signatories namely ; Shri Shankarrao Kabra is the Vice Chairman of the Society, and therefore, he can be said to be Chief Executive Officer of the Society. Shri Kasliwal further contends that in the present case, no dispute has been raised about the signatures by any of the requisitionists. Therefore, merely because there is no attestation, requisition cannot be held to be invalid. "To attest" means "to certify the validity". Though a particular form of the attestation is not required, it should be evidenced that the person concerned has certified genuineness or the validity of the signatures. On the requisition, I find that Shri Kabra has signed at serial No. 1 as one of the requisitionists and has not said anything about the genuineness of the rest of the signatures. There is no signature of any of the officers of the society much less Chief Executive Officer, certifying that "above signatures are genuine and, therefore, I attest them" or even an additional signature indicating that he has applied his mind and found signatures genuine. Therefore, submission of Shri Kasliwal will have to be discarded.

6. Rules are made for giving effect to purpose of the Act, they will have to be read alongwith provisions of the Act. Section 73-ID provides for the motion of no-confidence against officers of the societies. Sub-section (2) lays down as

follows :

" The requisition for such special meeting shall be signed by not less than one-third of the total number of members of the committee who are for the time being entitled to sit and vote at any meeting of the committee and shall be delivered to the Registrar. The requisition shall be made in such a form and in such a manner as may be prescribed".

Therefore, the legislature wanted that the requisition should be in particular form prescribed and delegated power to the State Government to make rule for that purpose. Therefore, mere absence of the imperative words like "must" or "shall" in sub-rule 1(e) of Rule 57-A by itself will not enable me to hold that the rule is directory. If the wish of the legislature is mandatory then the manner prescribed also becomes mandatory. While holding whether particular piece of legislation either principal or subordinate is mandatory or directory apart from the language used, one more factor will have to be considered and that is its purpose or the object to be achieved. The object to be achieved by section 73-ID(2) would be defeated if the rule is held directory. The section itself is mandatory in nature and, therefore, rule prescribing the mode of requisition is also mandatory. There is no scope for any other interpretation. The purpose of sub-rule 1(e) appears to be to protect office-bearers against fraudulent attempts to initiate action of no-confidence. The requisition requires specific number of the members of the committee to sign it and it sets in motion the procedure as is laid down by Rule 57-A. Rule wants that Registrar should satisfy himself about the genuineness of the signature. Since it is not possible for the Registrar to satisfy himself subjectively, therefore, the attestation is provided for and the Chief Executive Officer of the society and the Special Executive Magistrate, Executive Magistrate and Gazetted Government Officer have been authorized to do it. If we read the whole scheme of the motion of no-confidence as laid down in section 73-ID read with Rule 57-A, we find that the attestation is one of the most important requirements. The requisition is required to be signed by not less than one-third members of the committee who are at any time entitled to sit and vote at any meeting of the committee and, therefore, if some signatures are not genuine, it is likely that because of the misrepresentation the requisition can be treated to be valid when in fact it may not be. To prevent this the rule requires that signatures on the requisition should be attested. Looking to this nature, I find that the rule is mandatory and non-compliance of the rule renders the

requisition and the consequential meeting invalid.

A perusal of the above extracted paragraphs clearly shows that the learned Single Judge of this Court has held that provision of Rule 57A(1)(e) is mandatory. The purpose of sub-rule 1(e) appears to be to protect office-bearers against fraudulent attempts to initiate action of no confidence. Rule requires that Registrar should satisfy himself about the genuineness of the signature. It is not possible for the Registrar to satisfy himself subjectively, therefore, the attestation is provided for and the Chief Executive Officer of the society and the Special Executive Magistrate, Executive Magistrate and Gazetted Government Officer have been authorized the same. In view thereof, the submission of Mr. Sawant that the provision of Rule 57A(1)(e) is directory and not mandatory cannot be accepted.

9. Mr.Sawant submitted that the said contention was not even raised before the Deputy Registrar and for the first time that was considered by the first respondent. A perusal of the Minutes of the meeting dated 20.3.2017 shows that respondent no.3 specifically raised objection about noncompliance of Rule 57A(1) (e). However, respondent no.2 did not deal with this aspect at all. In other words, it cannot be said that the said objection was raised by the 3rd respondent for the first time before the first respondent. A perusal of the order passed by the first respondent shows that the first respondent has considered the

provisions of Rule 57A(1)(e) as also the decision of this Court in Santukarao which holds that the provision of Rule 57A(1)(e) is mandatory and failure to comply renders the requisition as well as consequential meeting invalid.

10. Mr. Sawant submitted that in fact out of 9 members who were present in the meeting of 20.3.2017, 8 members voted in favour of no confidence motion. In other words, the motion is carried by a majority of 2/3rd members who were present in the meeting. It is also not possible to accept this submission as well. I have already held that requisition is not in conformity with Rule 57A(1)(e). Section 73-ID(4) lays down that the meeting shall be presided over by the Registrar or such officer not below the rank of an Assistant Registrar of Co-operative Societies authorized by him and he shall, when presiding over such meeting, have the same power as the President or Chairman when presiding over a committee meeting has, but he shall not have the right to vote. Rule 57A(7)(k) lays down issuance of certificate in Form M-19 in favour of the society. Form M-19 provides for issuing certificate regarding the result of requisitioned special meeting of the committee of the society. A perusal of Form M-19 as also the certificate dated 20.3.2017 issued by the second respondent shows that respondent no.2 has certified that the motion of no confidence is rejected. In view thereof, I do not find any merit in the submission of Mr. Sawant that the motion of no confidence is

carried.

11. Lastly, Mr. Sawant submitted that it may be clarified that provisions of section 73-ID(7) will not come in the way of the petitioners in bringing second no confidence motion within a period of one year. In view of Section 73-ID read with Rule 57A(1), I do not find any merit in this submission as basically the motion being not in conformity with Rule 57A (1)(e) is rejected by issuing certificate to that effect. In view thereof, Petition fails and the same is dismissed. It will, however, be open for the petitioners to bring fresh motion of no confidence in accordance with law. Order accordingly.

(R.G.Ketkar,J.)