

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6125 OF 2016

Chandrashekhar Balasaheb Shete .. Petitioner
vs.
Arun Sitaram Chambhare & Ors. .. Respondents

Mr. N. V. Khaladkar for Petitioner.
Mr. S. S. Kothari for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 08 SEPTEMBER 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] The challenge in this petition is to the orders dated 30th November 2015 and 5th April 2016 made by the Co-operative Court and the Maharashtra State Co-operative Appellate Court (revisional authority) dismissing the petitioner's applications under Order VII Rule 11 of CPC or applications seeking to invoke the principles of Order VII Rule 11 of CPC in the matter of election dispute no. 61 of 2015 pending before the co-operative court.
- 3] Mr. Khaladkar, learned counsel for the petitioner submits that the issue relating to rejection of nomination paper of respondent no. 1 has already attained finality in terms of the orders made by the prescribed authorities under section 152-A of the Maharashtra Co-

operative Societies Act 1960 (MCS Act). He submits that by virtue of the proviso to section 91 of the MCS Act, it is impermissible for the co-operative court to revisit such issue and the co-operative court, is obliged to dismiss the dispute application at the very thresh-hold. He submits that in as much as the co-operative court and the revisional authority have failed to appreciate this aspect and are insisting upon exercising jurisdiction, when in fact, they have no such jurisdiction, impugned orders warrant interference under Article 227 of the Constitution of India.

4] On the other hand, Mr. Kothari, learned counsel for the respondent no. 1 submits that this Court, in the case of ***Chapadgaon Vividh Karyakari Seva Sahakari Society & Ors. vs. Collector of Ahmednagar & Ors.***¹ has already held that the so-called finality attached to the order made under section 152-A of the MCS Act is only an *ad hoc* finality operative upto the stage of completion of the election process. He submits that in this case it is held that remedy under section 91 of the MCS Act is very much available after the conclusion of the election process. Further, Mr. Kothari points out that even this Court, whilst dismissing the petition of the respondent no. 1 questioning the order under section 152-A of the MCS Act it specifically reserved liberty to the petitioner to avail of alternate remedy as may be available under the law in the

1 1989 Mh.L.J. 872

matter of rejection of his nomination paper.

5] Mr. Kothari further submits that the co-operative court on 22nd January 2016 has already framed issues with regard to its jurisdiction to try the dispute and also, as regards invocation of the principle of *res judicata* by the petitioner. Mr. Kothari submits that since these issues are already framed, there is no question of dismissing the dispute or ordering the return of dispute application by invoking provisions of Order VII Rule 11 of CPC or principles analogous thereto.

6] In this case, both the co-operative court as well as revisional authority have approached the issue with the proper legal perspective. This is clearly not a case for invocation of the provisions of Order VII Rule 11 of CPC. The issue as to whether the co-operative court can exercise jurisdiction under section 91 of the MCS Act or not is certainly an arguable issue, particularly considering the decision upon which reliance was placed by Mr. Kothari. Besides, the co-operative court, has already framed issues regards its jurisdiction as also the applicability of the principle of *res judicata*. Accordingly, there is no jurisdictional error in the making of the impugned orders. The impugned orders do not have the effect of *per se* rejecting the contentions of the petitioner. In fact, the contentions are deemed to have been kept open for decision by the

co-operative court along with the remaining issues framed by it.

7] This petition is accordingly dismissed. There shall be no order as to costs.

8] It is made clear that none of the observations made in the impugned orders or for that matter the present order shall influence the co-operative court in disposing of the dispute and the issues therein on their own merits and in accordance with law. Accordingly, it is made clear that all contentions of all parties are expressly left open.

(M. S. SONAK, J.)

Chandka