

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9589 OF 2017

Mahesh Jayantilal Vora .. Petitioner
vs.
District Deputy Registrar (IV)
Co-operative Societies, Mumbai & Ors. .. Respondents

Mr. Ashok Kumar Mishra for Petitioner.
Ms Vaishali Nimbalkar – AGP for Respondent Nos. 1 to 3.
Mr. Nitin Gangal for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 04 OCTOBER 2017

P.C :

- 1] Not on board. Upon production, taken on board.
- 2] Heard Mr. Mishra for the petitioner and Mr. Gangal for the respondent no. 4.
- 3] The challenge in this petition is to the order dated 31st May 2016 made by the District Deputy Registrar, Co-operative Societies (4), Mumbai, allowing the respondent no. 4's revision application questioning the Deputy Registrar's order dated 30th August 2008. The operative portion of the impugned order reads as follows:-

“ORDER

1. *The Revision Application is hereby accepted.*
2. *The Order Dated 30.08.2008, passed under section 101 of the M.C.S. Act 1960 by The Deputy Registrar, Co-*

operative Societies, 'P' Ward, Mumbai, is hereby quashed and set aside and the case is reminded back for fresh hearing in light of the above observations.

3. Deputy Registrar, Co-operative Societies, 'P' Ward, Mumbai shall hear the case on merit & only related to the Recovery Application filed by the Society u/s 101 of MCS Act (i.e. 01.01.2002 to 30.06.2003 (Total 18 Months)."

4] Mr. Mishra submits that there is an overwriting and the impugned orders bears two dates i.e. 31/05/2016 and 31/12/2016. He submits that this is one of the infirmities in the making of the impugned order. He then submits that the petitioner, who was, respondent no. 2 before the District Deputy Registrar, had, on 21st April 2016, applied for time to file written arguments as well as to go for oral arguments. Mr. Mishra points out that on 20th April 2016, the petitioner, had applied for an appointment of the Chartered Accountant to act as a Commissioner or a Government Auditor to audit the petitioner's personal accounts and until this exercise is carried out to keep the proceedings in abeyance or *sine die*. Mr. Mishra submits that the impugned order has been made without taking into consideration these two applications made by the petitioner.

5] There is no merit in the contentions of Mr. Mishra based upon the so-called two dates which the order bears. In fact, the printed date is 31/05/2016 and nothing much really turns upon the date written in ink which is 31/12/2016. Certainly, the impugned order,

does not warrant interference on the ground of such so-called discrepancy in dates.

6] In the impugned order, the revisional authority, has made the following observations which are transcribed below:-

“Observation

On the issue of Admission of present Revision Application, Hon'ble High Court has passed an order on 20th April 2012 in Writ Petition No. 18583 of 2012 & directed this authority to decide the Revision independently on its own merits and as expeditiously as possible and in any case, within a period of 6 months from receipt of the order.

However due to overload of work, hectic schedule & shortage of staff it was not possible to decide the matter in time frame given by Hon'ble High Court. However, now it is taken up on preferential basis. On perusal of submissions of both Applicant and Respondent No. 2, my observations are as follows:-

1. Even after clear direction received from Hon'ble High Court, Respondent No. 2 has filed various irrelevant applications which are not at all concerned with present Revision Application. This act of Respondent No. 2 shows that he doesn't want to finalize this case, but to linger the case.

2. However the respondent no. 2 has, during the course of hearing had filed an application to call on the records & proceedings from the office of the respondent no. 1 i.e. Deputy Registrar, Co-operative Societies, P Ward.

The records and proceeding were called and the respondent was also allowed by the applicant to inspect its record. The matter was finally heard on 5/4/2016 and the respondent was given liberty to file his written arguments on or before dt. 20/4/2016.

The respondent no. 2 has on 19/1/2016, submitted that though his actual excess amount with the society is lying

Rs.181409/- he has filed statement of difference of difference of accounts before Deputy Registrar P Ward Mumbai on 7/4/2008 after which the Deputy Registrar P ward has passed the order dated 30/8/2008 in which the complainants are ordered to pay the respondent the excess amount lying with the society. He further submitted the updated statement of difference of account upto March, 2016.

The Respondent further says that he is not the defaulter but the complainant society is defaulter. They are also not allowing the re-audit of the books and records of the society. The complainant society has cheated and has played a big fraud game in the society.

It is also the say of the respondent that the litigation between the complainant society and him is from 17/4/2003 and the complainant society has given the contradictory say as per their convenient before the different authorities.

All these contentions of the respondent are not relevant to decide the present application in which the main issue is whether the Deputy Registrar has erred in deciding the recovery application for the period 1/1/2002 to 30/6/2003.

3. Recovery Application was filed by the Society u/s 101 of MCS Act for the period from 01.01.2002 to 30.06.2003 (Total 18 Months). However, the Deputy Registrar, Co-operative Societies, 'P' Ward, Mumbai has passed order from 05.03.1997 to 31.12.2002 (including period prior to the registration). Deputy Registrar has no jurisdiction to pass the order for period prior to the registration Application filed by the Society u/s 101. I am of the view that The Deputy Registrar has crossed the limits beyond jurisdiction vested to him while passing the order.

4. I further say that The Deputy Registrar has made serious mistake in considering payment of Rs.22,820/- made to Society, as alleged by Respondent No. 2, without verifying proof of Original Receipt or obtaining cross confirmation from any third party (e.g. bank records, etc.)."

7] In particular, the revisional authority has noted that the petitioner, was interested in making irrelevant applications thereby

creating an impression that the petitioner merely desired the proceedings to linger on and not to attain any finality. From the perusal of the two applications made and the submission as regards discrepancy in dates, there is really no reason to differ from the observations made by the District Deputy Registrar. In this case, there were directions from this Court for expeditious disposal of the proceedings. Such directions imply that even the parties have to cooperate with the authority so that expeditious disposal is possible. Instead, in this case, for all sorts of reasons, adjournments were applied for and after the same came to be declined, there is this complaint alleging non compliance with principles of natural justice. Such a complaint, cannot be entertained in the facts and circumstances of the present case.

8] The impugned order, has merely remanded the matter to the Deputy Registrar of Co-operative Societies to decide the case on merits restricted only to the recovery application filed by the society seeking recovery of maintenance amounts for the period from 1st January 2002 to 30th June 2003 i.e. 18 months. There is no jurisdictional error in the impugned order. The impugned order has not decided the dispute between the parties on merits but required the Deputy Registrar to undertake this exercise in the light of observations made in the impugned order.

9] For the aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

10] It is clarified that this Court has not adverted to the merits of the matter and therefore all contentions of all parties shall be considered and agitated upon by the Deputy Registrar of Co-operative Societies.

(M. S. SONAK, J.)

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