

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

WRIT PETITION NO.12129 OF 2016

Shri Ashok Kundlik Nalavade & Ors. ..Petitioners
Vs.
Shri Shekar Dattatraya Nalavade & Ors. ..Respondents

Mr. C. G. Patil for the Petitioners.
Mr. S. P. Kadam for the Respondent No.1 to 6 and 9.
Mr. S. D. Rayrikar, AGP for the Respondent Nos.7 and 8.

**CORAM : R. M. SAVANT, J.
DATE : 7th MARCH, 2017**

P.C.

. The above writ petition takes exception to the order dated 5/10/2016 passed by the Divisional Joint Registrar, District Kolhapur, by which order the Appeal filed by the Respondent Nos.1 to 6 herein came to be partly allowed and the order dated 30/8/2016 passed by the Assistant Registrar of the Cooperative Societies came to be set aside and the matter came to be remanded back to the Assistant Registrar for a fresh decision in the light of the observations made in the impugned order.

The Petitioners also challenge the order dated 10/10/2016 passed by the Assistant Registrar, Co-operative Societies, Satara, which is the order passed pursuant to the order of remand of the Appellate Authority.

2. The Appeal filed before the Divisional Joint Registrar was against the order dated 30/8/2016 passed by the Assistant Registrar under section

77(A) of the Maharashtra Co-operative Societies Act thereby appointing an authorized officer, in view of the fact that the strength of the Managing Committee had gone below the required number.

3. Insofar as the order passed by the Divisional Joint Registrar is concerned, there can be no dispute about the fact that the said order has been passed without hearing the Petitioners, as the Petitioners were not joined as parties to the said Appeal. As indicated above by the aforesaid order dated 5/10/2016, the matter has been remanded back to the Assistant Registrar and the Assistant Registrar thereafter has passed the order dated 10/10/2016, thereby co-opting one person, i.e. the Respondent No.11 as a member of the Managing Committee of the Respondent No.9/Society. The said order is also passed without the Petitioner being heard in the matter. The same is sought to be justified by the learned counsel appearing for the Respondent Nos.1 to 6 by contending that since the Petitioners have resigned as members of the Managing Committee of the Respondent No.11/Society, the need to hear them was obviated.

4. In my view, since the impugned order i.e. 10/10/2016 emanates from the order dated 5/10/2016 passed by the Divisional Joint Registrar and since the said order dated 5/10/2016 was passed without hearing the Petitioners, though the Petitioners were the complainants before the Assistant Registrar and, therefore it is at the behest of the Petitioners that the said order dated 30/8/2016 came to be passed. It was incumbent for the Appellate

Authority to hear the Petitioners, the order dated 5/10/2016 therefore is vitiated on the said ground.

5. However, taking note of the fact that pursuant to the order dated 10/10/2016 one person has been co-opted as a member of the Managing Committee and this Court is informed that the Respondent No.11 along with Respondent Nos. 1 to 6 are presently functioning as the Managing Committee of the Respondent No.9/Society, hence, it would be just and proper if the order dated 5/10/2016 as also the order dated 10/10/2016 passed by the Assistant Registrar are set aside and the matter is remanded back to the Divisional Joint Registrar for a de novo consideration of the Appeal. Hence, the following directions:

- i) The impugned order dated 5/10/2016 passed by the Joint Registrar, Kolhapur stands set aside as also the subsequent order dated 10/10/2016 passed by the Assistant Registrar would stand set aside;
- ii) The Divisional Joint Registrar would consider the Appeal filed by the Respondent Nos.1 to 6 de novo by allowing the Appellants therein to implead the Petitioners herein as party Respondents to the Appeal;
- iii) The Divisional Joint Registrar would thereafter hear the parties and pass appropriate orders in accordance with law;

- iv) Amendment in the Appeal to be carried out on or before 17/3/2017;
- v) Since the Respondent No.11 has already been co-opted and is functioning as a Managing Committee member of the Respondent No.9/Society, the said position would continue, pending consideration of the Appeal;
- vi) The continuation of the Respondent No.11 would be without prejudice to the rights and contentions of the parties and would be subject to the result of the Appeal;
- vii) All contentions of the parties in that regard are kept open,
- viii) It is expected that the Managing Committee would not take any major policy decision, pending the Appeal. However, it is permitted to carry out the day to day affairs of the Respondent No.9/Society;
- ix) The Appeal to be decided on its own merits and in accordance with law;
- x) Parties to appear before the Divisional Joint Registrar on 15/3/2017;

xi) The Divisional Joint Registrar to thereafter decide the Appeal latest by 15/4/2017;

With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]