

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

WRIT PETITION NO.340 OF 2017

**Proposed Akshay Co-operative
Matsvyavasay Society Ltd. Shirala
Through its Chief Promoter
Smt. Ankita Patil**

: Petitioner.

versus

**Dhopeshwar Matsya Vyavsayik
Cooperative Society Ltd.
At Kadamwadi Upvale and ors.**

: Respondents.

Mr. S S Prabhune for the Petitioner.

Mr. S D Rayrikar, AGP for the Respondent Nos.2 to 6.

**CORAM : R. M. SAVANT, J.
DATE : 13th January 2017**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23/11/2016 passed by the Commissioner and Additional Registrar Cooperative Societies (Fisheries), Maharashtra State, Mumbai by which order the delay in filing the Revision by the Respondent No.1 was condoned.

2 The Petitioner is a society involved in the activities of fishing in Morana Lake, Sangli and has been registered as such. The Respondent No.1 had also filed an application for registration as a society, involved in the activities of fishing in the said Morana Lake, Sangli. The said application filed by the Respondent No.1 was allowed and the Respondent No.1 was registered

as a society on 23/09/2014. The Petitioner challenged the said registration by filing Appeal before the Assistant Registrar of Co-operative Societies (Fisheries), Sangli. The Appeal filed by the Petitioner came to be allowed and suffice it would be to state that the registration of the Respondent No.1 Society came to be set aside. The Respondent No.1 aggrieved by the same, filed an Appeal before the Commissioner (Fisheries) i.e. the Respondent No.6. On behalf of the Petitioner herein a contention was raised that the said appeal was not maintainable as a second appeal under Section 152 of the Maharashtra Co-operative Societies Act is not available. The second ground was that the single appeal could not be filed challenging two orders passed by the Appellate Authority setting aside the registration of different societies. The Respondent No.6 – i.e. the Commissioner (Fisheries) dismissed the appeal on the ground that a second appeal was not maintainable under Section 152 of the said Act and also observed that the single appeal could not be filed challenging the two orders concerning to different societies.

3 In the light of the dismissal of the appeal on the ground that it was not maintainable, the Respondent No.1 thereafter filed a Revision invoking Section 154 of the said Act challenging the order passed by the Assistant Registrar, Co-operative Societies allowing the appeal filed by the Petitioner. Since there was a delay in filing the said revision, the Respondent No.1 filed an application for condonation of delay.

4 The Respondent No.6 herein i.e. the Commissioner (Fisheries) having regard to the fact that the appeal filed by the Respondent No.1 was dismissed on the ground of its maintainability, and accepting the case of the Respondent No.1 that some time was lost in collecting the papers etc after the appeal was dismissed as also on the ground that principles of natural justice require that the revision filed by the Respondent No.1 be heard on merits allowed the application for condonation of delay by the impugned order and accordingly directed that the appeal be registered and be heard on merits. As indicated above it is the said order dated 23/11/2016 passed by the Respondent No.6 herein which is taken exception to by way of the above Petition.

5 The learned counsel appearing on behalf of the Petitioner Shri Prabhune would seek to reiterate the submissions urged on behalf of the Petitioner before the Respondent No.6 and would contend that since the Respondent No.1 chose to proceed with the appeal, it is now not open for the Respondent No.1 to invoke the revisionary jurisdiction under Section 154 of the said Act. The learned counsel would seek to place reliance on the judgment of the Apex Court reported in 1972(1)BLegal 38 in the matter of Rabindra Nath Samuel Dawson v/s. Sivakasi.

6 In my view, the said contentions of the learned counsel for the Petitioner cannot be accepted in the light of the fact that the appeal filed by the Respondent No.1 has been dismissed on the ground of its maintainability. It is required to be noted that after the appeal was dismissed, the Respondent No.1 has immediately thereafter filed the revision. The Respondent No.6 having deemed it appropriate to exercise discretion in favour of the Respondent No.1, this Court does not deem it appropriate to interfere with the said discretion. In the facts and circumstances of the present case, the judgment of the Apex Court would have no application. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]