

WRIT PETITION NO.507 OF 2016

- Mr.U.P. Warunjikar, Advocate for the Petitioners.
- Mr.Y.K. Deshmukh, Advocate for Respondent No.2.
- Mr.H.B. Takke, AGP for the Respondent No.1/State.

P.C. :

1. By the above Writ Petition direction is sought against the authorities exercising powers under the Maharashtra Co-operative Societies Act (MCS Act for short), to exercise powers under the said MCS Act by taking action in respect of the complaints and representations made by the Petitioners. The Petitioners herein are the members of the Respondent No.2 Society i.e. The BEST Employees Co-operative Credit Society Limited. The Petitioners have made a grievance to the Deputy

Registrar of Co-operative Societies, 'A' ward, Mumbai, in respect of the manner in which the Annual General Body Meeting (AGM for short), Mumbai, of the said Society was held on 26/09/2015, which representation is dated 19/10/2015. The said representation was replied to by the Deputy Registrar by his letter dated 27/11/2015 and after referring to the facts relating to the holding of the Annual General Meeting of the Respondent No.2 Society on 26/09/2015 and the change in venue thereof, the Deputy Registrar informed the Petitioners that they may approach the Co-operative Court u/s 91 of the MCS Act, in respect of their grievance relating to the Annual General Meeting of the said society. Though the relief sought by way of prayer clause (a) is couched in general terms, the Petitioners seem to be aggrieved by the said communication dated 25/11/2015 received by them from the Deputy Registrar of Co-operative Societies, 'A' Ward informing them of they having to approach the Co-operative Court, u/s 91 of the said MCS Act.

2. It was the submission of the learned counsel for the Petitioner, that the Respondent No.2 Society is having 43357

members and that the Annual General Meeting which was held on 26/09/2015 was in a premises which had sitting capacity for only about 400 people. It was further the submission of the learned counsel that since about 14246 members out of the said 43357 had assembled, it seems that the venue for the Annual General Meeting was shifted to another place at the last minute, without there being any notice or pre-intimation to the members. It was the submission of the learned counsel that on account of the last minute change, only about 110 members could attend the meeting. It was therefore the submission of the learned counsel that an illegality has been committed by the Respondent No.2 Society in the matter of holding the Annual General Meeting and therefore it was necessary for the Deputy Registrar to exercise power under the said MCS Act. The learned counsel sought to place reliance on section 75(5) and section 147 (F) of the said Maharashtra Co-operative Societies Act, to contend that non-holding of the meeting is a factor, which can be taken into consideration for penalizing the office bearers of the Society. It was the submission of the learned counsel that

the Registrar cannot be a silent spectator and direct the Petitioner to file a dispute u/s 91 of the MCS Act.

3. On behalf of the Respondent No.2/society an Affidavit in Reply has been tendered in Court, which is dated 01/04/2016 dealing with the claims and contentions raised in the petition. We are informed that a copy of the said Affidavit is already served on the other side. It is stated in the said affidavit that the Society had booked a hall in Jawahar Nagar, S.V. Road, Sardar Vallabhbhai Patel Bhavan, Goregaon (W), Mumbai, 400 104, for the said Annual General Meeting to be held on 26/09/2015. However, the society informed the Respondent No.2 that since the NOC from the police has not been received, it is compelled to cancel the booking of the hall. It is further stated that the Respondent No.2 Society had issued notice to all the members well in advance and therefore in view of the cancellation of the booking of the hall, the Respondent No.2 Society had to make last minute arrangements by booking a hall, which was nearby for the meeting to be held between 03.00 to 06.00 p.m. It is

further stated that the Secretary of the Respondent No.2/Society put a notice on the outside of the hall informing all the members that the venue of the meeting has been changed and the same is at a new address, which was mentioned in the notice. It is also stated that the office bearers also orally informed all the members about the change in venue. It is lastly stated that as the notice of the Annual General Meeting was already given, it was not possible to cancel the meeting and hold it at some other place.

4. Hence the affidavit of the Respondent No.2 discloses the reasons as to why there was a change in the venue. The said affidavit also discloses that in fact the AGM was held on 26/09/2015. The contention urged on behalf of the Petitioner impinges upon the legality and validity of the said AGM dated 26/09/2015. There is no dispute about the fact that the said meeting was held. Whether the meeting was held by following the procedure etc. is another matter and can be gone into only when there is a challenge to the legality and validity of the said meeting. It is in the said circumstance that the Deputy Registrar,

vide his letter dated 27/11/2015, has informed the Petitioners that the said authority does not have the power to determine the legality and validity of an AGM and it is only the Co-operative Court u/s 91, which can do so.

5. In our view, the reliance placed on section 75(5) which postulates action being taken against the office bearers for non-holding of the AGM, or that the punishment be imposed u/s 147 (f) of the MCS Act on the office bearers, is pre-mature, as legality and validity of the AGM has to be determined by the appropriate forum, which in the instant case can only be the Co-operative Court. In our view, therefore, there is no merit in the above Petition. The same is accordingly dismissed. However, it would be open for the Petitioner to follow the course of action, which is propounded by the Deputy Registrar in his letter dated 27/11/2015. Needless to state that if any proceedings are filed u/s 91 by the Petitioner, the same would be tried on their own merits and in accordance with law.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)