

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

WRIT PETITION NO.5801 OF 2018

Rajan Shantaram Vaze

.. Petitioner

Vs.

The Divisional Joint Registrar, Co-operative
Society Kokan Division & Ors.

.. Respondents

Mr.Kishor Patil i/by Vivek Patil & Associates for the petitioner.

Mr.S.H.Kankal, AGP for the respondent nos.1 & 2-State.

CORAM : R.D. DHANUKA, J.

DATE : 25th July 2018

P.C.:

. Learned counsel appearing for the petitioner states that the respondent no.3 had not appeared before the authority and thus is not served.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 1st November 2017 passed by the respondent no.1 and order dated 26th July 2017 passed by the respondent no.2.

3. By an order dated 3rd November 2017, the respondent no.1 has rejected the appeal filed by the petitioner under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short "MCS Act") on the ground that since the application filed by the petitioner was under Section 10 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management & Transfer) Act, 1963 (for short "MOFA"), the appeal under Section 152 of the MCS Act is not maintainable.

4. Learned counsel appearing for the petitioner invited my attention to Section 10 of the MOFA and also to Sections 8 and 9 of the MCS Act and the Rule 4(1) of the Maharashtra Co-operative Societies Rules, 1961 (for short "MCS Rules). It is submitted that since the Promoter did not apply for formation and registration of the society under Sections 8 and 9 of the MCS Act read with Rule 4(1) of the MCS Rules, the flat purchasers applied for formation and registration of the society. He invited my attention to the application for registration of the society filed by the petitioner in Form 'A' with the Deputy Registrar of the Co-operative Society. The said application was however rejected by the learned Deputy Registrar of the Co-operative Society. Being aggrieved by the said order dated 26th July 2017 passed by the learned Deputy Registrar of the Co-operative Society, the petitioner preferred an appeal under Section 152 of the MCS Act.

5. It is submitted by the learned counsel that though the application for registration of the society could be filed by the members in view of the default committed by the Promoter under Section 10 of the MOFA, such application for registration of the society could be filed only under Sections 8 and 9 of the MCS Act read with Rule 4(1) of the MCS Rules. The said application filed by the petitioner is rejected by the Deputy Registrar on the ground that the said application was not maintainable. He submits that the application for registration of the society could be filed only under Sections 8 and 9 of the MCS Act read with Rule 4(1) of the MCS Rules and thus the appeal under Section 152 of the MCS Act is maintainable against the order dated 26th July 2017 passed by the Deputy Registrar of Co-operative Society under Section 9 of the MCS Act.

6. Mr.Kankal, learned AGP for the respondent nos.1 & 2 fairly invited my attention to the proviso to Section 10 of the MOFA and would submit that this Court shall consider the said proviso and pass an appropriate order.

7. A perusal of the record indicates that the petitioner applied for formation and registration of the co-operative society in view of the default committed by the Promoter under Section 10 of the MOFA. On perusal of the proviso to Section 10 of the MOFA, it is clear beyond reasonable doubt that if the Promoter fail to submit an application to the Registrar for registration of the society, the competent authority may, upon receiving an application from the persons who have taken flats from the said Promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society.

8. The petitioner had accordingly invoked the provisions of Sections 8 and 9 of the MCS Act read with Rule 4(1) of the MCS Rules. Section 152 of the MCS Act clearly provides for a remedy of an appeal against the order passed by the authority under Section 9 of the MCS Act. The impugned order was passed by the learned Deputy Registrar rejecting the application for formation and registration of the co-operative society under Section 9 of the MCS Act. The appeal under Section 152 of the MCS Act is thus maintainable against the said order. There is no provision for filing an appeal under the provisions of the MOFA against such order passed by the Deputy Registrar rejecting the application for formation and registration of the co-operative society. The first proviso

to Section 10 of the MOFA clearly indicates that the provisions of the Maharashtra Co-operative Societies Act, 1960 would be applicable to such application for formation of society.

9. In my view, the order passed by the learned Divisional Joint Registrar rejecting the application on the ground of maintainability is ex facie and perverse, without application of mind and also contrary to the provisions of Sections 8 and 9 of the MCS Act read with Rule 4(1) of the MCS Rules, Section 152 of the MCS Act and proviso to Section 10 of the MOFA and thus deserves to be set aside.

10. I therefore pass the following order :-

- (i) The impugned order dated 1st November 2017 passed by the Divisional Joint Registrar, Co-operative Society, Kokan Division, Navi Mumbai is quashed and set aside.
- (ii) Appeal filed by the petitioner under Section 152 of the MCS Act is restored to file.
- (iii) The Divisional Joint Registrar, Co-operative Society, Kokan Division, Navi Mumbai shall decide the said appeal within three months from the date of first hearing without being influenced by the observations made and the conclusions drawn in the impugned order and on its own merit.
- (iv) The petitioner is directed to appear before the Divisional Joint Registrar on 8th August 2018 at 11.00 a.m.
- (v) If the date and time fixed by this Court is not convenient to the learned Divisional Joint Registrar, he shall convey the earliest convenient date to the petitioner.

(vi) Petition is made absolute in the aforesaid terms. No order as to costs.

(vii) Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.