

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

WRIT PETITION NO. 4046 OF 2017

Prakash Tejmal Aswani ... Petitioner
Versus
The Chairman/Secretary,
Bobby Pathak Avane CHS Ltd. and another ... Respondents

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Mr. Omkar Nagwekar i/b Mrs. Prabha Uday Badadare for
Petitioner.

Mr. Prashant Phophale for PMH Law for Respondent No.1.

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CORAM : M. S. SONAK, J.

DATE : 27th APRIL, 2018

P. C.:

1. Rule. Rule is made returnable forthwith. Heard learned Counsel for the parties.

2. This matter was heard for a considerable time and in fact, entire order was dictated in the matter. However, as I reached to the conclusion, learned Counsel for the Petitioner as well as the respondent No.1 point out the revision instituted by the Petitioner, which was not at all maintainable before the District Deputy Registrar of Co-operative Societies, but such a revision was

required to be instituted before the Divisional Joint Registrar of Co-operative Societies.

3. Although, the reasons stated by the District Deputy Registrar in the impugned order do not appear to be correct since *prima-facie*, there was compliance with the provisions of Section 154(2A) of the Maharashtra Cooperative Societies Act, 1960 that by itself will make no difference, since, now it transpires that the Petitioner had instituted the revision petition before an authority which lacked jurisdiction to entertain the same.

4. In the aforesaid circumstances, by imposing certain conditions upon the Petitioner, an equitable order is required to be made.

5. This Petition is accordingly disposed of with the following order.

ORDER

- (a) The District Deputy Registrar, before whom revision petition came to be filed, is directed to return the memo of revision to the Petitioner and the Petitioner is granted liberty to present the same before the

Divisional Joint Registrar, who according to the Petitioner is the revisional authority. This exercise is to be completed within four weeks from today.

- (b) Before insisting upon compliance with the aforesaid directions, the Petitioner is directed to deposit with the Respondent No.1 Society a further amount of Rs. 75,000/- i.e. an amount in addition to Rs. 75,000/- already deposited by the Petitioner with the Respondent No.1 Society. If, within a period of four weeks from today the Petitioner deposits this amount and produces proof in this regard before the District Deputy Registrar, then, the District Deputy Registrar to comply with direction (a) as aforesaid.
- (c) The Divisional Joint Registrar to dispose of the Petitioner's revision application on its own merits after affording an opportunity of hearing to all parties concerned.
- (d) Pendency of proceedings before the revisional authority shall not preclude Respondent No.1 society

from seeking further recovery certificates, since it is the case of Respondent No.1 and by now the dues have gone up to Rs.8,00,000/-. Further it is clarified that this Court has not adjudicated upon whether or not any amounts are at all payable by the Petitioner to the society or not.

6. Rule is disposed of with the aforesaid terms with no order as to costs.

7. All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)