

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6142 OF 2017

Girish Sahakari Griharachana Sanstha Maryadit & Ors. ...Petitioners.

Vs.

1.Shri.Shanu Ranchhoddas Patel & Ors.

...Respondents

Mr.S.S.Patwardhan, for the Petitioners.

CORAM : G.S.KULKARNI, J.

DATE : 13 February 2018

P.C. :

1. Heard Mr.Patwardhan, learned Counsel for the petitioners. Respondents though served, are absent. The challenge in this petition is to the order dated 3 April 2017/ 5 April 2017 passed by the learned Member, Maharashtra State Co-operative Appellate Court, whereby the application as filed by the petitioner below “Exhibit 7” raising an objection to the maintainability of the revision as filed by respondent no.2, has been disposed of with a direction that the issue of maintainability of the revision filed by respondent no.2, can very well be considered at the adjudication of the revision.

2. Mr.Patwardhan, learned Counsel for the petitioners has drawn my attention to the application of the petitioners filed below “Exhibit 7” and more particularly to a specific ground as raised in relying on the decision of this Court in the case “*Khandesh Urban Co-operative Credit Society Ltd. Vs. Ashok Rameshwar Agrawal*”¹. It is thus contended that the revision as filed by respondent no.2 which is against the order dated 19 January 2017 by which the plaint was rejected, would not be maintainable. The contention of Mr.Patwardhan is that the issue goes to the root of the matter and thus, it would have been appropriate for the learned Member of the Maharashtra State Co-operative Appellate Court to decide the issue on maintainability of the revision of respondent no.2 at the threshold. It is submitted that no prejudice would be caused to the petitioners. It is further submitted that the approach of the learned Member of the Maharashtra Co-operative Appellate Court and more particularly the observations as made in paragraph 6 of the impugned order are not acceptable inasmuch as the scope of the revision and the scope of the appeal are completely different and thus, there was no impediment for the learned Member of the Maharashtra State Co-operative Appellate Court to decide the application of the petitioners raising objection to the maintainability of the revision as filed by respondent no.2,

1 2002(4) ALL M.R. 91

3. Having heard Mr.Patwardhan, learned Counsel for the petitioners and having perused the impugned order and the documents as placed on record, there is much substance in the contention as urged on behalf of Mr.Patwardhan. Considering the facts of the case, it would be appropriate for the learned Member of the Maharashtra State Co-operative Appellate Court to first decide the issue in regard to the maintainability of the revision application as filed by respondent no.2 and more particularly when the maintainability has been questioned in view of the position in law, on behalf of the petitioners, relying on the decision of this Court in *Khandesh Urban Co-operative Credit Society Ltd. Vs. Ashok Rameshwar Agrawal* (supra). It is not in dispute that by an order dated 19 January 2017 on an application as filed on behalf of respondent no.2, respondent no.2 had succeeded and the plaint against respondent no.2 was rejected. If this was to be the position, then certainly it fell for consideration of the learned Member of the appellate Court to consider as to whether respondent no.2 had any locus to pursue the proceedings being no more a party to the principal proceedings. The writ petition accordingly deserves to succeed.

4. The impugned order dated 5 April 2017 is accordingly quashed and set aside. Learned Member of the Maharashtra State Co-

operative Appellate Court is directed to reconsider the application below 'Exhibit 7' as filed by the petitioners and decide the same in accordance with law as expeditiously as possible and preferably within a period of one month from today. Ordered accordingly. No costs.

5. All contentions of the parties on the merits of the 'Exhibit 7' application as also the principal dispute, are expressly kept open.

(G.S.KULKARNI, J.)