

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8892 OF 2018**

Krishnakant V. Mulik & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Satish Borulkar a/w Mr. Ulhas Naik for the Petitioners

Mr. R. P. Kadam, A.G.P for the Respondent Nos. 1 to 3-State

Mr. Syed Ahmed for the Respondent Nos. 4 to 8

Mr. Abhiman Patil i/b Mr. Amit Karande for the Respondent No. 9

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 30th AUGUST 2018

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Respondents waive service through their respective counsel.

3 By this petition, the petitioners have impugned the order dated 21st April 2018 passed by the Divisional Joint Registrar, Cooperative

Societies, Mumbai Division, Mumbai, by which the petitioners' application for stay filed in Revision Application No. 7 of 2018 came to be rejected. Mr. Borulkar, learned counsel for the petitioners submitted that the order dated 29th December 2017 passed by the Deputy Registrar, disqualifying the petitioners for five years was patently erroneous. He submitted that the Deputy Registrar had failed to consider that the Annual General Meeting ('AGM') could not be held due to a genuine reason i.e. the illness of the Treasurer and non-availability of other members and as such the breach was technical. He submitted that admittedly no malafides, misappropriation, etc. has been alleged as against the petitioners by the respondent Nos. 4 to 8. He submitted that the petitioners had filed a revision application against the order dated 29th December 2017 disqualifying them for five years and as such pending the revision application, the Divisional Joint Registrar, having regard to the facts of the case, ought to have stayed the impugned order dated 29th December 2017.

4 Learned counsel for the respondent Nos. 4 to 8 opposes the petition and grant of any relief. He submits that no interference is warranted in the impugned order. He submits that the petitioners had failed

to comply with the provision of Section 75(1) of the Maharashtra Cooperative Societies Act, inasmuch as, the AGM was not held within the stipulated period but was held subsequently i.e. after the stipulated period, thus there was contravention of Section 75(1) of the Maharashtra Cooperative Societies Act. Learned counsel for the respondent No. 9-Society supports the petition.

5 Perused the papers. A few facts as are relevant to decide the petition are set out as under :

All the petitioners were members of the Managing Committee prior to the elections which were held on 8th January 2017 i.e. between the period 2012 to 2017. On the expiry of the said period i.e. 2012-2017, fresh elections were held on 8th January 2017. In the said elections, four out of the nine petitioners were re-elected as office bearers/members of the Managing Committee of the respondent No. 9 Society i.e. Krishnakant V. Malik, Subhash T. Sharma, Nitin V. Rane and Madhu Santoshkumar (Mehrotra) i.e. the petitioner Nos. 1, 2, 4 and 9 respectively. It appears that for an act which was committed in 2015, a complaint was made by the respondent Nos. 4 to 8 in January 2016 alleging that the petitioners had not

held the AGM prior to 30th September 2015 as required and as such had contravened the provisions of Section 75(1) of the Maharashtra Cooperative Societies Act, 1960. The respondent Nos. 4 to 8, in the said application, prayed that the Managing Committee members (petitioners) be disqualified from contesting society election for one term as prescribed under the law and for taking appropriate penal action against the Managing Committee members.

6 It is not in dispute that the AGM was to be held on or before 30th September 2015. It is also not in dispute that on 22nd September 2015, the members of the respondent No. 9 society had voluntarily submitted an application to the Deputy Registrar, Cooperative Societies i.e. the respondent No. 3 stating that because of the ill-health of the Treasurer, the accounts of the respondent No. 9 Society were not ready for audit and as such the preparation of the audit report and the balance-sheet were delayed. It was also informed that the audit report and the balance-sheet were received by the respondent No. 9 Society from the Auditor and that it would not be possible to hold the AGM before September 2015. It was also mentioned in the said letter dated 22nd September 2015 that it was

unanimously decided to conduct the AGM under the Chairmanship of the Authorized Officer and as such request was made to appoint an Authorized Officer to conduct the AGM. Pursuant thereto, an Authorized Officer was appointed for conducting the AGM which was held on 29th November 2015.

7 It appears that pursuant to the application filed by the respondent Nos. 4 to 8 in January 2016, the Deputy Registrar heard the parties and was pleased to allow the application and the petitioners were disqualified for the remaining period and for a further period of five years. The said order dated 29th December 2017 passed by the Deputy Registrar, Cooperative Societies, Mumbai, was challenged by the petitioners by filing a revision application, being Revision Application No. 7 of 2018 before the Divisional Joint Registrar, Mumbai. Along with the said Revision Application, the petitioners filed an application seeking stay to the order dated 29th December 2017. The Divisional Joint Registrar vide order dated 21st April 2018 was pleased to reject the said application.

8 *Prima facie*, it appears that there are no allegations of malafides, misappropriation, misfeasance, etc. and that the allegations are technical in nature. It also appears that the petitioners on behalf of the respondent No. 9-Society had themselves filed an application on 22nd September 2015 prior to 30th September 2015, setting out the reasons for not being able to conduct the AGM and had requested that an Authorized Officer be appointed for conducting the AGM under his Chairmanship, which was subsequently conducted in November 2015.

9 Without going into the merits, since the revision application is pending before the Divisional Joint Registrar, *prima facie*, I am of the opinion that the impugned order dated 29th December 2017 passed by the Deputy Registrar needs to be stayed till the final decision and disposal of the revision application. Accordingly, the order dated 21st April 2018 passed by the respondent No. 2-The Divisional Joint Registrar, the stay application filed in Revision Application No. 7 of 2018 is quashed and set-aside.

10 The Joint Divisional Registrar shall decide the revision application on its own merits uninfluenced by the interim stay granted by this Court. All contentions of all the parties are kept open.

11 Rule is made absolute in the above terms. Petition is disposed of accordingly.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.