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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3608 OF 2018

Govind Bala Wadkar

... Petitioner

Vs.

Assistant Registrar,
Sahakari Sanstha Sawantwadi
& Ors.

.... Respondents

Mr. Irfan A. Shaikh, for the Petitioner.

Mrs. Sushma Bhende, AGP for Respondent Nos. 1 & 5.

Mr. Saurabh Butala a/w Sonam Singh i/b Amogh Khadye, for
Respondent No. 2.

**CORAM : INDRAJIT MAHANTY, &
SARANG V. KOTWAL, JJ.**

DATE : JANUARY 15, 2019

PC :

1. By this petition, the Petitioner sought to challenge the order dated 16.1.2017 passed by Respondent No. 1 vide जा. क. सनिसा/अ/मससंअ. नि. ५८ आदेश / २०१६. It would be worthwhile to mention herein that although by the said order, Petitioner was disqualified from being elected member of Respondent No. 4 Society, yet in the meantime, subsequent to the passing of impugned order, it appears from the order dated 29.3.2017 passed

below Exhibit 5 in C.C. No. 91/2017 by the Judge, Co-Operative Court No. II, Kolhapur (Exhibit “K” to the petition) that he had challenged the impugned order before the Co-Operative Court, which came to be rejected.

2. The learned counsel for the Petitioner submits that since the Co-operative Court at Kolhapur had given a finding in paragraph 13 that the challenge to the said order is beyond the jurisdiction of the said Court. Consequently, he filed present writ petition, essentially to challenge the order dated 16.1.2017. The relevant portion of paragraph 13 of the said order dated 29.3.2017 reads as under:

“13. It is also pertinent to note that the order pass by the Assistant Registrar, Sawantwadi is beyond the jurisdiction of this Court. The explanation provided to section 91 is debarred to this court to entertain any dispute against the order pass by the Registrar and in the matter the applicant in the pleading stated that the order dated 16.01.2017 of said authority is illegal. The applicant has remedy under provision of MCS Act against the order of said authority. ...”

3. The learned counsel appearing for Respondent No. 2 as well as the learned counsel representing the State raised a

preliminary objection regarding maintainability of this petition on the ground that the Petitioner has, by way of an alternate remedy, recourse to file revision under S. 154 of the Co-operative Societies Act, 1960. Consequently, the writ petition ought not to be entertained.

4. The learned counsel for the Petitioner, on the other hand, submitted that alternate remedy is not a bar to entertain the present petition, since the Co-operative Court came to a conclusion that he lacks necessary jurisdiction to pass any order in the matter, and therefore, he was compelled to file present petition. He further clarifies that the order dated 29.3.2017 (Exhibit “K” to the petition) is no longer in force since the said order was passed by way of interim order, but the original complaint CC No. 91/2-17 has already been disposed of in the meantime. Therefore, the Petitioner may be granted liberty to adopt such a recourse, which is available under the law.

5. Having heard the learned counsel for the respective parties and having perused the pleading, and on a reading of

concluding paragraph 13, which is quoted hereinabove, we are of the considered view that the conclusion that it lacks jurisdiction was in the context of there existing alternate remedy in favour of the Petitioner under the Maharashtra Co-operative Societies Act, 1960, and therefore, although the term “beyond the jurisdiction” has been used, it effectively means existence of an alternate efficacious remedy. In that view of the matter, we are of the considered view that present writ petition being premature in view of existence of an alternate efficacious remedy, we restrain ourselves from exercising the writ jurisdiction. Therefore, keeping open the alternate remedy open, as is available under law, to the Petitioner, the writ petition is disposed of.

Sd/-

[SARANG V. KOTWAL, J.]

Sd/-

[INDRAJIT MAHANTY, J.]