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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.11292 OF 2019

WITH

CIVIL APPLICATION NO.10967 OF 2019

Mrs.Mamta Ashok Dhar & Ors.

..Petitioners.

V/s.

Deputy Registrar & Ors.

..Respondents.

Mr.Suresh Sabrad with Mr.Amey Sawant for the petitioners.

Mr.R.P.Kadam, AGP for respondent Nos.1 to 6.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 18, 2019

P.C.:-

Heard respective counsel.

2. It is the case of the petitioners that for period 2018-19 to 2022-23, six members were elected and two were nominated as such there are eight members out of the total strength of 11 members in a Co-operative Housing Society.

3. Since two members from the elected body tendered resignation, the Deputy Registrar, Co-operative Society in exercise

of powers under section 77A(1)(b-1) of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short) appointed an authorised officer to look after and manage the affairs of the society and to hold further elections as the requisite quorum, according to the said authority, is not complete.

4. The submission of the petitioners is, the requisite quorum as per the bye-law No.114 is six members and the fact remains that in spite of two members having resigned from the managing body, four elected and two nominated members are managing the affairs of the society. He submits that the order appointing an authorised officer is illegal.

5. He would further urge that neither a notice nor an opportunity of hearing was given to the petitioners before passing the order.

6. My attention is sought to be invited to the action taken by the petitioners of filing an appeal against the aforesaid order under the provisions of section 152 of the Act in which the Divisional Joint Registrar, Mumbai has rejected the prayer for interim relief. In the aforesaid background, the order impugned is questioned in this petition.

7. Learned AGP supported the order of refusal of the stay as according to him, the authority has looked into the requisite quorum in the backdrop the relevant bye-laws and passed the impugned order under the provisions of section 77A(1)(b-1) of the Act.

8. Having considered the rival submissions, what is noticed is petitioners, from the record have demonstrated that there are six elected candidates and two nominated, out of which two elected candidates have resigned. After the resignation, the quorum which remains is of four elected and two nominated i.e. six candidates on the managing body. In the wake of provisions of bye-law 114, minimum quorum prescribed is that of six members and that being so, by accepting the statement of the petitioners, it can be inferred that there was prescribed quorum available to carry out day to day functioning of the society. In the aforesaid backdrop, the order impugned passed by respondent No.6 dated April 8, 2018 is hereby quashed and set aside. The application for grant of stay moved by the petitioners in Appeal No.98/2019 is hereby allowed.

9. During the pendency of Appeal No.98/2019, the order

passed by the authority i.e. Deputy Joint Registrar appointing appropriate officer to manage the affairs of the society shall remain stayed.

10. In the facts and circumstances of the case, it would be appropriate to direct the respondent authority to decide the appeal of the petitioners within a period of three months from today.

11. With the above observations, the petition stands disposed of.

12. In view of the disposal of the writ petition, the civil application also stands disposed of.

(NITIN W.SAMBRE, J.)