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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8042 OF 2016

1] Shri Haresh S. Bodani,
2] Smt. Bharati D. Aswani,
3] Shri Arvind D. Aswani,
4] Shri Hargun M. Aswani,
5] Shri Jeetu G. Pahiani,
6] Smt. Vinita J. Aswani. **..Petitioners.**

Vs

1]The Divisional Joint Registrar,Co-Operative Societies,Pune
2] Seva Vikas Bank Ltd,
3] Election Officer,
4] State of Maharashtra **..Respondents.**

WITH

WRIT PETITION NO. 8124 OF 2016

Shri Haresh Motiram Aswani, **..Petitioner.**

Vs.

1]The Divisional Joint Registrar,Co-Operative Societies,Pune
2] Seva Vikas Bank Ltd,
3] Election Officer,
4] State of Maharashtra through Co-Operative Minister **..Respondents.**

Mr. G.S. Godbole I/b Mr. D.S. Patil for the Petitioners.
Mr. A.Y. Sakhare, Senior Advocate a/w Mr. Vijay Patil, Mr.S.R. Nargolkar and S.Rebello for the respondent No.5.
Ms. Geeta Sonawane, AGP for the State/Respondent Nos.1 and 4.

CORAM : A.S.GADKARI, J.
Reserved On : 30th July 2019.
Pronounced On: 14th August 2019.

JUDGMENT :-

1] The present petitions under Article 227 of the Constitution of India, take exception to the Orders dated 31st May 2016 and 28th January 2016 passed by the Honourable Minister of Co-Operation, Marketing and Textile i.e. the respondent No.4 herein in Revision No.24 of 2015 and 44 of 2015 under section 154 of the Maharashtra Co-Operative Societies Act, 1960 (for short 'M.C.S.Act'), rejecting the said Revisions and confirming Order dated 5.1.2015 passed in Appeal No.81 of 2014 by the Divisional Joint Registrar, Co-Operative Societies, Pune i.e. the respondent No.1 herein and 6.6.2014 passed by the District Deputy Registrar, Co-Operative Societies, Pune City under section 13(2) of the M.C.S. Act.

2] Heard Mr. G.S. Godbole, the learned counsel appearing for the Petitioners, Mr. A.Y. Sakhare, senior counsel appearing for the respondent No.2 Bank and the learned AGP for the respondent Nos.1 and 4. Perused the record.

3] The brief facts giving rise to the present petitions can be summarised as under:

(i) The respondent No.2 is the Co-Operative Bank, a Co-Operative Society registered under the M.C.S. Act and Rules framed thereunder (M.C.S.Rules, 1961). The petitioners are the Members of the respondent No.2 Bank. Annual General Meeting of the respondent No.2 was conducted on 19.9.2013, wherein amendment to the bye-law Nos.1, 2, 4, 9, 10, 12, 13, 20, 26, 28, 29(a), 29(d)(iii), 31(v), 36(i), 39 and 48 of the bank was proposed. The General Body of the respondent No.2 Bank granted approval to the amendment to the said bye-laws by more than two-third majority and as per the observations made by the Divisional Joint Registrar, Co-Operative Societies, i.e. the respondent No.1 herein, in its Order dated 5.1.2015 (internal page No.11 of the said Order), 724 members of the respondent No.2 were present to the said Annual General Meeting and the amendment to the said bye-laws was unanimously accepted by the General Body.

(ii) The respondent No.2 thereafter forwarded its application dated 7.11.2013 for approval of the proposal for amendments of the existing bye-laws to the District Deputy Registrar. The District Deputy Registrar by its Order dated 4.12.2013 accepted amendments to the bye-laws Nos. 1, 2, 4, 9, 10, 12, 20, 29(a), 29(d)(iii), and 48, however, rejected amendments to the bye-laws Nos.13, 26, 28, 31(v), 36(i) and 39.

(iii) The respondent No.2 therefore preferred an Appeal No.10 of 2013 under Section 152 of the M.C.S. Act before the Divisional Joint Registrar, Co-Operative Societies, Pune and the said Authority by its Order dated 24.1.2014 was pleased to set aside Order dated 4.12.2013 passed by the District Deputy Registrar, predominantly on the ground that, the District Deputy Registrar did not grant an opportunity of being heard to the respondent No.2 before rejecting amendments to the said bye-laws. It was observed by the said Authority that, the respondent No.2 ought to have granted an opportunity of being heard while rejecting the amendments to the said bye-laws and the matter was remanded back to the District Deputy Registrar.

(iv) After remand of the said matter to the District Deputy Registrar, the respondent No.2 bank was heard and the District Deputy Registrar passed an Order dated 6.6.2014, thereby allowing the amendments to the bye-law Nos. 13, 26, 28, 31(v), 36(i) and 39 under section 13(2) of the M.C.S. Act. The contention of the bank was that, with a view to avoid membership to anti-social elements in the bank the said bye-law No.31(v) was necessary to be amended. It was also contended by the respondent No.2 that, with a view to avoid bogus voting at the time of election of the bank biometric identity card was prescribed by effecting amendments in the bye-laws. It was the further contention of the respondent No.2 bank that, in view of ensuing elections at the relevant time and to avoid ambiguity about the active members of the bank a further amendment was incorporated in the bye-laws. The District Deputy Registrar accepted the contention of the respondent No.2 bank and approved the amendments to the bye-laws Nos.13, 26, 28, 31(v), 36(i) and 39 by its Order dated 6.6.2014. It is observed by the District Deputy Registrar in the said Order that, the said amendments are in consonance with the provisions of M.C.S. Act and beneficial to the business of the bank.

(v) All the petitioners feeling aggrieved by the said Order dated 6.6.2014 passed by the District Deputy Registrar passed under Section 13(2) of the M.C.S. Act, accepting and registering the said bye-laws, preferred an Appeal No.81 of 2014 before the respondent No.1 under section 152 of M.C.S. Act. The respondent No.1 after hearing the parties to the said appeal and after perusing the record, was pleased to dismiss the said appeal by holding that, there is no substance in the objections raised by the appellants (petitioners herein). That the subject matter of the said

Appeal is a “Dispute” as contemplated under section 91 of M.C.S. Act and therefore the petitioners are required to seek relief from the Co-Operative Court. The respondent No.1 further held that, as the contentions raised by the petitioners were beyond the jurisdiction of the said Authority, it did not adjudicate upon and express any opinion on the issues involved in the said appeal. The respondent No.1 while recording the said conclusion has observed that, the seven appellants therein (petitioners herein) have challenged the amendment to the bye-laws which were accepted by the General Body by the respondent No.2 bank in its Annual General Meeting and therefore challenge to the said bye-laws is a “dispute” between the petitioners and the respondent No.2 bank, as contemplated under section 91 of M.C.S. Act and for the said dispute, it was necessary for the petitioners to avail the said remedy which would fall beyond the jurisdiction of the respondent No.1.

It has been further observed that, the petitioners had made an application before the respondent No.2 Bank for transfer of shares in the year 2012 and in furtherance of Order dated 6.6.2014 passed by the District Deputy Registrar, allowing the amendment to the bye-laws, the said applications were rejected by the respondent No.2 Bank and therefore also the said “dispute” between the petitioners and the respondent No.2 would be “Dispute” within the meaning of section 91 of the M.C.S. Act and cannot be challenged under section 152 of M.C.S. Act by way of Appeal.

(vi) Feeling aggrieved by the Order dated 5.1.2015 passed by the respondent No.1, the petitioners in Writ Petition No.8042 of 2016, preferred Revision Application bearing No.RVA-2015/24/15C and the petitioners in Writ Petition No.8124 of 2016 preferred Revision Application bearing No.RV/C.N.44/15C before the Honourable Minister, Co-Operation, Marketing and Textile, Government of Maharashtra i.e. the respondent No.4 herein. The respondent No.4 by recording its concurrent findings rejected the said Revisions by its impugned Orders dated 31.5.2016 and 28.1.2016 respectively. The respondent No.4 has also come to the conclusion that, the dispute challenging the said bye-laws of the respondent No.2 gives rise to a “Dispute” as contemplated under section 91 of the M.C.S. Act , it would be appropriate for the petitioners seeking relief in that behalf before the Co-Operative Court. It is also observed that, Appeal under section 152 of the M.C.S. Act would not lie pertaining to the dispute raised by the petitioners.

4] Mr. Godbole, the learned counsel appearing for the petitioners submitted that, the basic Order impugned herein is passed under section 13(2) of M.C.S. Act allowing amendments to the bye-laws mentioned therein by the District Deputy Collector, Co-Operative Societies, Pune and under section 152 of the said Act, an Appeal is maintainable against the said Order. He submitted that, bye-law No.31 pertains to transfer of shares and the amendment to the said bye-law is illegal. He submitted that, there is difference in the wordings of the bye-law No.31 which has been approved in the General Body meeting dated 19.9.2013 than the one which is submitted for its approval and registration to the District Deputy Registrar, Co-Operative Societies, Pune. He submitted that, the District Deputy Registrar, without verifying the construction of the sentences, has approved the amendment to the said bye-law No.31 by its impugned Order dated 6.6.2014. He submitted that, the respondent No.2 bank did not get two-third majority as required under the bye-laws, so also the District Deputy Registrar without, verifying the truthfulness of it and following the necessary provisions of law, has passed the said impugned Oder dated 6.6.2014. He submitted that, Order dated 6.6.2014 passed by the District Deputy Registrar is with respect to the procedure and touches the procedural aspect of the matter and it does not give rise to a dispute, as contemplated under section 91 of M.C.S. Act. He submitted that, both Authorities below therefore have committed serious error in recording concurrent findings and therefore this Court may quash and set aside the said Orders by allowing the present petitions.

5] Mr. Sakhare, the learned senior counsel appearing for the respondent No.5 while opposing the petitions, has pointed out the relevant provisions of M.C.S. Act and Rules framed thereunder. He submitted that, the bye-laws were amended by passing Resolution in General Body Meeting of the respondent No.2 bank held for that purpose by more than two-third of the majority. He submitted that, the respondent No.1 has rightly observed in its Order dated 5.1.2015 that, the said amendment was passed unanimously by all the Members present in the Meeting. He submitted that, the petitioners are the only persons who are opposing the said bye-laws for promoting their political agenda. He submitted that, in view of Rule 8(2)(c) of the M.C.S. Rules, 1961, the Society is entitled to make rules pertaining to the condition, if any, under which the transfer of shares and the interest of a Member may be protected and in consonance with the said Rule the relevant bye-law has been amended to promote the interest and betterment of the Society. He submitted that, the said amendment to the bye-law pertains to the transfer of shares in consonance with Section 29 of the said Act. He further submitted that, in view of Section 13(1)(B) of the said Act, the Registrar can refuse to register amendment to any bye-law which is repugnant to the policy directives, if any, issued by the State Government under Section 4 of the said Act. That in the present case, the amendment proposed and passed by overwhelming majority of the members, is in consonance with the directives issued by the State Government and which will help in promoting business and purpose of the Society.

He submitted that, opposition to the amendment to bye-laws will give rise to a dispute touching the constitution and/or management or business of the Society, as contemplated under section 91 of M.C.S. Act and therefore the Co-Operative Court will have jurisdiction to resolve the said dispute. He submitted that, there is no procedural defect while passing the Resolution for amendment to the said bye-laws in the General Body Meeting so also by the concerned Authority under section 13(2) of the said Act and therefore section 152 of M.C.S. Act will have no application in the present case. That the petitioners are challenging to the adoption/certification to the bye-laws which have been approved in the General Body Meeting of the Society by overwhelming majority. In support his contention, Mr.Sakahare relied upon a decision of this Court in the case of Wadala Shri Ram Industrial Premises Co-Op.Society Ltd Vs. Kotecha & Company & Ors, reported in 2001 (4) Bom. C.R. 365.

He further submitted that, bye-laws Nos. 4(v), 9(a), 9(d). 13(i), 31(iv)(a), 31(iv)(b)(iv), and 41(d)(iv),(v), and (vi), 41(d)(i),(ii),(iii), and (vii) and 42 have been further amended by the General Body of the respondent No.2 in its Annual General Meeting held on 25.9.2018 and the Additional Commissioner and Special Registrar, Co-Operative Socities, Maharashtra State, Pune has approved bye-law Nos.4(v), 9(d). 13(i), 31(iv)(a), 31(iv)(b)(iv), and 41(d)(iv),(v), and (vi) by its Order dated 18.12.2018 and therefore challenge to the earlier amendment to the same bye-laws as of today does not survive.

He submitted that, both Authorities below have properly appreciated the said legal aspect while rejecting the contention of the petitioners. He therefore prayed that, both the petitions may be dismissed.

6] In the present case, the aforestated amendments to the said bye-laws were duly passed by the General Body of the respondent No.2 in its Annual General Meeting held on 19.9.2013 as contemplated under Rule 12(3) of M.C.S. Rules 1961 by passing Resolution with overwhelming majority in that behalf. The respondent No.1 in its Order dated 5.1.2015 has observed that, 724 members of the respondent No.2 were present to the said Annual General Meeting and the amendment to the said bye-laws was unanimously accepted by the General Body. It is contended by the petitioners that, because of amendment to bye-law Nos.13 and 31(v) the rights beneficial therein to them would be abridged. I find no substance in the said contention, as the General Body in its Annual General Meeting has passed Resolution by overwhelming majority and has approved the said bye-laws.

The question on interpretation of amended bye-laws or its applicability to the petitioners cannot be a subject matter of an Appeal under Section 152 of M.C.S. Act, though challenging the Order granting registration of the amendment of the bye-laws under Rule 13(2) of the said Act. In the General Body Meeting, a Resolution in that behalf was passed by not less than two-thirds of the Members present there and voting as contemplated under Rule 12(3) of the M.C.S. Rules, 1961, then, only mandatory procedural compliance for carrying out amendment as well as its registration can be challenged under section 152 of M.C.S. Act. The Appellate Authority by exercising jurisdiction under 152 of M.C.S. Act, cannot elongate the scope of the proceedings and pronounce upon the applicability or authority or otherwise of the bye-laws. Inasmuch as, the question regarding interpretation and applicability of the amended bye-laws can be done only by the Court in a dispute under section 91 of the said Act. The issue regarding applicability of the amended bye-laws as against the particular class of members and in particular aggrieved members cannot be a ground for assailing the registration of the amended bye-law of the Society. It is also not a ground which essentially questions the validity of the amendment as such. The scope of enquiry in Appeal under section 152 will have to be limited as to whether the Registrar had rightly exercised its jurisdiction while passing the order under section 13 of the said Act, registering the amendment of bye-law of the Society. The Appeal under 152 of the Act being in continuation of the Order passed by the Registrar in exercising the powers under section 13 of the Act, the scope of such an Appeal will have to be limited to the nature of enauiry that can be made by the Registrar while registering or refusing to register the amendment of bye-laws of the Society. In such cases, the petitioners or the aggrieved members will have to file dispute under section 91 of M.C.S. Act. A safe reliance can be placed on the decision of this Court in the case of Wadala Shri Ram Industrial Premises Co-Operative Society Ltd. Vs. Kotecha & Company (M/s) & Ors., reported in 2001 (4) Bom.C.R. 365 : 2001 AIR (Bombay) 464 : 2001 (4) ALL M.R. 36 : 2001 (4) Mh. L.J. 616. I find substance in the submission of Mr. Sakhare, the learned counsel that, opposition to the amendment to bye-laws would give rise to a dispute touching the management or business of the Society, as contemplated under Section 91 of M.C.S and therefore the Co-Operative Court will have jurisdiction to resolve the said dispute.

7] After the provision of Rule 12(3) of M.C.S. Rules, 1961 is duly followed, it gives rise to a dispute as contemplated under section 91 of M.C.S. Act, as it then touches the management or business of the Society. The management or business of the Society is governed by the bye-laws framed under the provisions of M.C.S. Act and the Rules framed thereunder. In the present case, the challenge set up by the petitioners is not with regard to the mandatory procedural compliance for carrying out the amendment of the bye-laws as such, but their challenge is to the jurisdiction of the amended bye-laws.

In view of the above, this Court is of the opinion that, challenge to the amendment of bye-laws by the petitioner will give rise to filing of a dispute under section 91 of M.C.S. Act and not an Appeal under section 152 of M.C.S. Act.

8] After taking into consideration the aforestated legal position, this Court is of the view that, the impugned Orders dated 31st May 2016 and 28th January 2016 passed by the respondent No.4 in Revision No.24 of 2015 and 44 of 2015 under section 154 of the Maharashtra Co-Operative Societies Act, 1960 do not suffer from any error, either in law or on the facts and no interference therein by this Court is necessary.

Both Writ Petitions being devoid of merits, are accordingly rejected.

(A.S.GADKARI, J.)