

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.12444 OF 2017

Sangeeta B. Vanmali ... Petitioner  
Vs.  
State of Maharashtra and others ... Respondents

Mr. Akshay A. Deshmukh for Petitioners.  
Mr. C. D. Mali, AGP for Respondent Nos.1 and 3-State.  
Mr. C. P. Deogirikar for Respondent No.2.

**CORAM : UJJAL BHUYAN, J.**  
**DATE : DECEMBER 12, 2019**

**P.C. :**

Heard Mr. Deshmukh, learned counsel for the petitioner; Mr. Mali, learned AGP for respondent Nos.1 and 3-State and Mr. Deogirikar, learned counsel for respondent No.2.

2. By filing this Petition under Article 226 of the Constitution of India, petitioner has assailed the legality and correctness of order dated 23.08.2017 passed by respondent No.3 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 whereby and whereunder respondent No.3 has issued recovery certificate for an amount of Rs.4,59,456.00 to be paid by the petitioner to respondent No.2.

3. From the pleadings and other materials on record, it is seen that there is a long litigation history between the petitioner and respondent No.2. However, for the purpose of deciding the present writ petition, it may not be necessary to refer to in detail the previous litigation between the parties.

4. Suffice it to say, matter relates to payment of maintenance dues of respondent No.2 by the petitioner. Respondent No.2 is Tikam Co-operative Housing Society Limited, Kopri Colony, Thane (East), Thane.

Membership of the petitioner in the said Co-operative Society has now been settled after a series of litigation which would be evident from the order dated 16.09.2010 passed by this Court in Contempt Petition No.179 of 2008 (Sangeeta B. Vanmali Vs. Tikam Co-operative Housing Society Limited) wherefrom it is evident that name of the petitioner has been recorded as a member of respondent No.2 and share certificate was also transferred in her name.

5. Respondent No.2 instituted Dispute No.CCT 477/2005 against the petitioner for recovery of maintenance arrears. The dispute was adjudicated by the Co-operative Court at Thane. By the order dated 26.02.2016, the dispute was partly allowed inasmuch petitioner was held to be liable to pay interest on the maintenance amount of Rs.24,170.50 till 31.12.1992 and to pay principal maintenance amount of Rs.79,316.50 till 31.08.2002. It was further directed that petitioner was also liable to pay interest of Rs.1,18,173.69 as on 31.08.2002.

6. It is stated that petitioner has deposited the aforesaid amount.

7. However, respondent No.2 claimed dues and interest from the petitioner for the period from 01.09.2002 till 31.12.2016. In this connection, respondent No.2 filed application under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ('the Act' hereinafter) for issue of recovery certificate against the petitioner for the said period. This application was filed on 06.02.2017.

8. Petitioner contested the said proceeding. In addition to oral submissions, she also placed on record her written arguments.

9. After hearing the matter, respondent No.3 passed the impugned order dated 23.08.2017 whereby it was held that petitioner was liable to pay an amount of Rs.1,24,035.00 as the principal amount and in addition to pay an amount of Rs.3,35,421.00 towards interest, total

Rs.4,59,456.00 for the said period. It was clarified that the principal amount would carry simple interest @ 21% till the entire amount was paid.

10. It is this order which has been assailed by the petitioner in the present proceeding.

11. Respondent No.2 has filed affidavit in reply contending that petitioner is a persistent defaulter of respondent No.2. While several other contentions have been made, primarily it is contended that the writ petition is not maintainable inasmuch there is a statutory alternative remedy of revision under Section 154 of the Act. Without availing the alternative remedy, the writ petition has been filed.

11.1. It is contended that in order to avoid deposit of 50% of the certificate amount as per requirement of Section 154(2-A) of the Act, petitioner has not availed the statutory alternative remedy but has invoked the writ jurisdiction of this Court.

12. While learned counsel for the petitioner has assailed the impugned order on various counts including alleged misinterpretation of various provisions of the Act and also the claim of respondent No.2 being barred by limitation, learned counsel for respondent No.2 submits that in view of availability of alternative remedy, Writ Court should not invoke its jurisdiction under Article 226 of the Constitution of India. In this connection, reliance has been placed on a decision of the Supreme Court in the case of *Arun B. Khanjire Vs. Ichalkaranji Urban Co-op. Bank Limited*, **2009 (1) ALL MR 492**.

13. Mr. Mali, learned AGP has supported the impugned order and submits that no interference is called for.

14. Submissions made by learned counsel for the parties have been

considered.

15. As already noticed above, challenge made in this writ petition is to the order dated 23.08.2019 passed by respondent No.3 under Section 101 of the Act. There is no dispute to the fact that a revision is maintainable against an order passed under Section 101 of the Act. In fact, petitioner in paragraph 30 of the writ petition herself admitted that revision is maintainable but considering the long litigation history between the parties, she has straightaway invoked the writ jurisdiction of this Court.

16. When the Statute itself has provided for a remedy to the petitioner, Court is of the view that petitioner should exhaust such statutory remedy before approaching the Writ Court. That apart, subject matter of challenge would require factual examination which may not be gone into in a proceeding under Articles 226/227 of the Constitution of India.

17. Similar was the position in the case of **Arun B. Khanjire** (*supra*). There also the High Court had dismissed the writ petition of the petitioner assailing an order passed under Section 101 of the Act without taking recourse to the remedy provided under the Act. While dismissing the Special Leave Petition against the decision of the High Court, Supreme Court held as under:

“16. Having carefully considered the submission made on behalf of the respective parties and having carefully considered the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960, and in particular Sub-section (2A) of Section 154, we are convinced that no interference is called for with the order of the High Court impugned in these proceedings. Admittedly, Section 154(1) of the above Act confers revisionary powers on the State Government and also the Registrar of Co- operative Societies under the Act. It also empowers the State Government or the Registrar to satisfy themselves as to the legality or the propriety of any such decision or order and to modify, annul or reverse the same after giving the person affected thereby an opportunity of being heard either suo motu or on an application. In the instant case,

although learned counsel Mr. Jaydeep Gupta tried to impress upon us that the proceedings had been commenced suo-motu, we are unable to accept such submission since an application had been made by the petitioner to the officer concerned in which all the facts relating to the appeal had been set out. Although, the same was not in the form of a formal Memorandum of Appeal it served the purpose of the appeal without compliance with the provisions of Sub- section (2A) which required deposit of 50% of the recoverable dues. In fact, the petitioner resorted to an innovative procedure in order to avoid the pre-condition of payment of 50% of recoverable dues as stipulated under Sub- section (2A) of Section 154 of the above Act.”

18. In such circumstances, Court is of the view that petitioner should avail her remedy as provided under the Act and if the revision is filed within a period of 4 weeks from today then the period spent in pursuing the writ petition may be taken into consideration by the revisional authority for condoning the delay in filing the revision application. No opinion is expressed on merit and all contentions are kept open.

19. Subject to the above, writ petition is dismissed.

**(UJJAL BHUYAN, J.)**

*Minal Parab*