

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.10795/2019

Mrs. Hemali Nainesh Gosalia Petitioner

Vs.

Bhagyodaya Coop. Housing
Society Ltd. & Ors. Respondents

with

Writ Petition No.10799/2019

Mrs. Hansa Chandrakant Gosalia Petitioner

Vs.

Bhagyodaya Coop. Housing
Society Ltd. & Ors. Respondents

Mr. Aloukik Pai a/w. Mr. N. D. Waje & Mr. A. P. Joshi I/b.
Thodur Law Associates for the Petitioner
Mr. Abhishek S. Mishra I/b. Solicis Lex for Respondent No.1.
Mr. S. H. Kankal, AGP for Respondent Nos.2 to 4.

**CORAM: K.K.TATED &
SARANG V. KOTWAL,JJ.**

DATED : NOVEMBER 5, 2019

P.C.

1 Heard. Both these Writ Petitions can be disposed of by
common order, as the issue involved is similar.

2 By these Writ Petitions under Article 226 and 227 of
the Constitution of India, the Petitioners are seeking
direction against the Dy. Registrar, Cooperative Societies,

K/West Ward, MHADA Building, Ground Floor, Bandra (East), Mumbai - 400051 to decide the preliminary issue raised by them pertaining to the delay in filing the application by the Respondent society u/s.101 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the "MCS Act") for recovery of dues.

3 In Writ Petition No.10795/2019, the Petitioner is owner of Flat No.4 and in Writ Petition No.10799/2019 the Petitioner is owner of Flat No.A-3. Both these flats are situated at Bhagyodaya CHS Ltd., Plot No.53, Sarojini Road, Mumbai - 400056.

4 As the Petitioners failed and neglected to pay the maintenance charges to the Respondent society, the Respondent society issued first notice dated 20.03.2015 u/s.101 of the MCS Act for recovery of the society dues. As the Petitioners failed and neglected to comply with the said notice, the Respondent society again issued notice dated 18.08.2015 u/s.101 of the MCS Act. In spite of that the Petitioners have failed to clear their dues. Therefore, the society issued final notice dated 15.02.2016 for recovery of the dues.

5 As the Petitioners failed to clear their dues, the Respondent society in its special general body meeting held on 31.12.2017 decided to take action against the Petitioners u/s.101 of the MCS Act for recovery of the society dues. Thereafter the Respondent society filed application No.5499/2018 before the Dy. Registrar, Cooperative

Societies, K/West Ward, MHADA, Bandra, Mumbai in Writ Petition No.10795/2019 and application No.5500/2018 in Writ Petition No.10799/2015. In those applications, the Petitioners filed their reply - cum objection dated 23.07.2019 and raised following issues:

“(a) Whether this Hon'ble Authority is competent to decide the belatedly filed application in its present form for recovery of arrears of sums allegedly payable towards maintenance and repairs charges to the Applicant as the same is barred by limitation?

(b) Whether this Hon'ble Authority is competent to decide the belatedly filed application in its present form for recovery of arrears of sums allegedly payable towards maintenance and repairs charges to the Applicant wherein the interest claimed is far in excess of the alleged arrears of principal amount as being violative of the rule of Damdupat ?

(c) Whether the act of entertaining the said Applicant by this Hon'ble Authority is subverting the rights and remedies of this Opponent ?

(d) Whether the proceedings entertained by this Hon'ble Authority without jurisdiction considering the issues required to be decided can be sustained / allowed to be continued?

(e) Whether the act of entertaining the said application for recovery by this Hon'ble Authority is patently in excess of his jurisdiction can be allowed to be continued and proceeded with?

6 The learned counsel for the Petitioners submits that in the present proceedings the Respondent society filed application u/s.101 of the said Act for recovery of their dues towards maintenance charges and other charges from 2007 till 2018 with interest. He submits that as per the Respondent - society's claim, the principal amount from

01.04.2007 to 01.01.2018 comes to Rs.4,00,854/- plus interest Rs.4,42,134/- in Writ Petition No.10795/2019 and Rs.7,83,617/- from 01.04.2003 till 01.08.2018 in Writ Petition No.10799/2019 plus interest of Rs.9,25,491/-. He submits that as per the provisions of the said Act, the Society can recover the arrears of maintenance for past three years only. He submits that the Limitation Act is applicable to the application u/s.101 of the MCS Act. In support of his contention, the Petitioners rely on the judgment of this court in the matter of **Versova Gurudatt CHS Ltd. Vs. Divisional Joint Registrar, Coop. Societies, Mumbai & Ors. 2004(1) Mh.L.J. 1118**. He submits that in this authority this court held that, section 92(1)(a) of the MCS Act discloses that the period of limitation specified under sub section (a) of sub section (1) of section 92 relates to the disputes which are referred to the Cooperative Court u/s.91 and not in relation to the matters arising under any other provisions of law contained in the said Act, or placed before any authority under the said Act. The provisions of section 92(1) of the Act are not attracted in a matter relating to disputes raised before the Registrar u/s.101 of the Act and therefore the period of limitation prescribed u/s.92(1)(a) cannot be applied to the cases placed before the Registrar u/s.101 of the said Act. Para 3 of the said Authority reads thus:

“3. As regards the ground pertaining to limitation, Section 92(1)(a) of the said Act provides that notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions of the said Act, the period of limitation in the case of dispute referred to the Co-operative Court under Section 91 of

the said Act when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be computed from the date on which such member dies or ceases to be a member of the society. Bare reading of this provision would disclose that the period of limitation specified under Clause (a) of Sub-section (1) of Section 92 relates to disputes which are referred to the Co-operative Court under Section 91 and not in relation to the matters arising under any other provisions of law contained in the said Act or placed before any other authority under the said Act. Admittedly, the matter in question was placed before the authority in terms of Section 101 of the said Act. The provisions of Section 92(1) of the said Act are not attracted in the matter relating to disputes raised before the Registrar under Section 101 of the said Act and therefore the petitioners are justified in contending that the period of limitation prescribed under Section 92(1)(a) cannot be applied to the cases placed before the Registrar under Section 101. The appellate authority having totally ignored this aspect, has acted illegally while rejecting the objection sought to be raised on behalf of the petitioners.”

7 The learned counsel for the Petitioners submits that though the Petitioners have specifically raised all these objections about the limitation before the learned Dy.Registrar, he failed and neglected to consider the same. Not only that the learned Dy. Registrar of Cooperative Societies has failed to frame a preliminary issue about the limitation. Hence, they preferred the present Writ Petitions for direction to the Dy. Registrar to decide the preliminary issue raised by the Petitioners and then proceed with the matter on merits.

8 During the course of arguments, the learned counsel for the Petitioners submits that the learned Dy. Registrar of

Cooperative Societies has closed both the matters, for orders, on 11.10.2019.

9 On the other hand the learned counsel for Respondent No.1 and AGP for State vehemently opposed both the Writ Petitions. Both the counsel submit that in the present proceedings the learned Dy. Registrar of Cooperative Societies has already heard the matters on merits and closed “for orders” on 11.10.2019. He submits that in view of subsequent development that both the matters are closed “for orders” by the Dy. Registrar on 11.10.2019, nothing survives in the present proceedings. Both the counsel submit that at the most, if any order passed by the Dy. Registrar, goes against the Petitioners, the Petitioners can always have remedy to challenge the same before the appropriate authority. Therefore, there is no question of entertaining the present Writ Petitions at this belated stage. Same are liable to be dismissed with costs.

10 It is to be noted that in both these matters, more than Rs.15 lacs is due and payable by the Petitioners towards the maintenance charges in respect of Flat Nos.3 and 4 which are in their possession. The Respondent society had issued notices to the Petitioner from time to time calling upon them to clear the maintenance charges. Not only that, the Respondent society made an application u/s.101 of the MCS Act for recovery of the entire arrears of maintenance charges. The Petitioners appeared before the Dy. Registrar and filed their reply. Thereafter the Dy. Registrar has closed the matters “for orders” on 11.10.2019. Once the

matter is closed for orders, there is no question of directing the Authority to re-hear the same on its own merits including on preliminary issue. At the most, the aggrieved party can challenge the said order before the appellate authority. In the present proceedings both the matters are closed “for orders” by the Dy. Registrar on 11.10.2019.

11 Hence, without considering the merits of the matter, “whether the application made by the Respondent Society u/s.101 of the said Act is maintainable or not”, the following order is passed, in view of subsequent development:

- a. Both the Writ Petitions stand dismissed.
- b. No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)