

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6661 OF 2019

Wassoodew Co. Op. Hsg. Ltd.
Having address at Surya 79,
Hill Road, Bandra, Mumbai -50.

..Petitioner

vs.

Smt. Jennifer Rebello
R/at. Flat No.305, Surya 79,
Hill Road, Bandra, Mumbai – 50.

..Respondent

.....

Mr. Anirban Tripathy i/b. Rupesh Mandhare, Advocate for Petitioner.
Mr. A. A. Kumbhakoni AG a/w. Akshay Shinde 'B' Panel, Counsel for
Respondent / State.
Mr. Brian D'lima a/w. Ms. Sherrie Rebello, Advocate for Respondent
No.1.

**CORAM : C.V. BHADANG, J.
DATE : 23rd JANUARY, 2020**

P.C.

1. The challenge in this petition is to the order dated 3/5/2019 (below Exhibit No.13) passed by the Co-operative Appellate Court, Mumbai in Appeal from Order No.78/2018. By the impugned order, the Appellate Court has allowed the application (Exh.13) filed by the respondent for conversion of the said appeal into a revision under Section 149 of the Maharashtra Co-operative Societies Act, 1960 ('Act' for short).

2. The brief facts are that the respondent filed a dispute under Section 91 of the said Act against the petitioner society. The

respondent filed an application for interim relief therein under Section 95(4) of the said Act. Learned Co-operative Court, by an order dated 12/7/2018 rejected the interim application, however, granted liberty to the respondent to make the payment of the bills raised by the society under protest, to show her bonafides.

3. The respondent challenged the said order before the Co-operative Appellate Court in A.O. No.78/2018. The petitioner raised a preliminary objection to the maintainability of the said appeal.

4. It appears that on 14/3/2019 the respondent filed application (Exh.13) for conversion of the appeal into a revision application. The petitioner contended that even the revision application is not maintainable against the order dated 12/7/2018. The Co-operative Appellate Court by the impugned order however has allowed the said application, permitting the conversion. Hence, this petition.

5. I have heard learned counsel for the parties and the learned Advocate General. Perused record.

6. This Court (Ujjal Bhuyan, J.) by an order dated 13/11/2019 had requested the learned Advocate General to assist the Court in the matter. This was for the reason that this Court (Ujjal Bhuyan, J.) found that there is an apparent conflict between the Co-ordinate Benches of this Court in the case of **Khandesh Urban Co-operative Credit Society Ltd. Vs. Ashok** 2002 SCC Online Bom 409, on one hand and the decision in the case of **Shri. Ghansham Shahani Vs. Smt. Komal Chhabria & Ors.** in Writ Petition No.3619/2002 decided on 17/7/2002 and **Mazgaon Instruments Company Vs. Sawantwadi**

Sahakari Udyamnagar Ltd. Mazgaon in Writ Petition No.1544/2011 decided on 3/10/2011.

7. Be that as it may, as noticed earlier, the petitioner raised a objection to the maintainability of the appeal as well as revision application. Section 97 of the said Act provides for appeal against the decision of the Co-operative Court under Section 96 and the order under Section 95 of the said Act. However, the issue in the present case is only about the validity of the impugned order permitting conversion of the appeal into a revision. For the present, this Court is only confining the consideration as to whether the order exhibits any jurisdictional error so as to require interference. In my considered view, no case for interference is made out.

8. Section 149 (9) of the Act which is relevant for the purpose reads thus.

*Section 149 Maharashtra State Co-operative
(Appellate Court)*

(9) The (Co-operative Appellate Court) may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it appears to the (Co-operative Appellate Court) that any such decision or order should be modified, annulled or reversed, the (Co-operative Appellate Court) may pass such order thereon as it may deem just.

9. This Court in the case of **Khandesh Urban Co-operative Credit Society Ltd.** (supra) held that the powers of revision can only be exercised and are restricted to the orders which are appealable in nature. In other words, this Court found that the non-appealable orders cannot be revised under sub-section 9 of Section 149 of the Act. However, it appears that the decision of the Supreme Court in the case of **Jai Mahavir Co-operative Housing Society Ltd. Vs. Panchal Keshavlal Narbheram and Ors.** (1987) 3 Supreme Court Cases 425 was not brought to the notice of this Court in the case of **Khandesh Urban Co-operative Credit Society Ltd.** (supra). The decision in the case of **Jai Mahavir Co-operative Housing Society Ltd.** (supra) arose out of a similar provision contained in the Gujarat Co-operative Societies Act, 1961 namely 150(9) which is *parimateria* to Section 149(9) of the said Act. This is what is held by the Supreme Court in para 13 of the judgment.

Para 13 – The High Court in the impugned judgment after considering this decision and the provisions contained in Section 97 came to the conclusion that when a dispute is referred to the Registrar under Section 96 and the Registrar entertains the dispute under Section 96 and ultimately finally disposes it of against the decision on the merits there is an appeal to the Tribunal according to Section 97 which is similar to Section 101 of the present Gujarat Co-operative Societies Act, 1961 and in view of this the learned Judges of the High Court came to the conclusion that under sub-section (9) of Section 150 the Tribunal has revisional jurisdiction in a matter

an appeal lies to it. Sub-section (9) of Section 150 reads thus-

(9) The Tribunal may call for an examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem just.

This confers jurisdiction on the Tribunal to call for and examine the record of any proceeding. The word 'proceeding' here is qualified by the phrase in which an appeal lies to it. It is not disputed that after final disposal of these proceedings i.e. decision of the dispute by the Registrar or by his nominee an appeal will lie to the Tribunal and therefore in the impugned judgment the Division Bench of the Gujarat High Court took the view that the Tribunal has jurisdiction to call for and examine the record of such proceedings. The judgment of the Bombay High Court on which reliance is placed refers to Sec. 149 sub-section (9) of the Maharashtra Co-operative Societies Act, 1960. It is no doubt true that the phrase 'any proceedings in which an appeal lies to it' is identical in the two statutes i.e. Sec. 150 sub-section (9) of the Gujarat Co-operative Societies Act and sub-section (9) of Sec. 149 of the Maharashtra Co-operative Societies Act, 1960. This language makes it clear that if the

proceedings where the final order is appealable then it could not be said that these are the proceedings where an appeal lies to the Tribunal (sic) and it is in these proceedings that the jurisdiction has been conferred on the Tribunal to call for the record and examine the matter. In this view of the matter, in our opinion, the view taken by the Division Bench of the Gujarat High Court in the present case appears to be correct and the High Court was right in coming to the conclusion that the Tribunal had jurisdiction to call for and examine the record i.e. exercise revisional jurisdiction. Although this was the only question which was stated in the certificate issued by the High Court, learned counsel also attempted to contend that the view taken by the High Court on the first question as to whether the Registrar is not competent to review his earlier decision but in our opinion even on that ground the view taken by the High Court appears to be correct.

(Emphasis supplied)

10. It can thus clearly be seen that the Hon'ble Supreme Court has held that any order passed in 'any proceedings' in which an appeal lies to it would be revisable.

11. Subsequently, this Court in the case of **Shri. Ghansham Shahani** (supra) and **Mazgaon Instruments Company** (supra) has held that the decision rendered in **Khandesh Urban Co-operative Credit Society Ltd.** (supra) does not lay down the correct legal position. This Court on 13/11/2019 found that ordinarily, decision

by a Co-ordinate Bench is binding on another Co-ordinate Bench. However, if a different view is taken by the later Co-ordinate Bench, the matter will have to be referred to the Hon'ble Chief Justice for placing it before a larger bench for an authoritative pronouncement. It is in these circumstances that the learned Advocate General was requested to assist the Court.

12. However, what I find is that the subsequent decisions in the case of **Mazgaon Instruments Company** and **Shri. Ghansham Shahani** (supra) are based on the decision of the Supreme Court in the case of **Jai Mahavir Co-operative Housing Society Ltd.** (supra) and therefore the decision in the case of **Khandesh Urban Co-operative Credit Society Ltd.** (supra) would be clearly *per curium*. It is well settled that if an earlier decision (even if of a Co-ordinate Bench) is against a binding precedent of a larger bench or a decision of the Supreme Court, another Co-ordinate Bench can always refuse to follow the earlier decision. In any event, the Supreme Court has clearly held that the order passed in any proceeding which are appealable, a revision would lie. In that view of the matter, the impugned order does not require any interference. The petition is without any merit and is accordingly dismissed with no order as to costs.

13. I take this opportunity to place on record the valuable assistance provided by the learned Advocate General in resolving the question of law on the request of this Court.

C.V. BHADANG, J.