

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

WRIT PETITION NO.11298 OF 2018

Zarir Behram Kerawalla and Anr.

..Petitioners

V/s.

Jaiji Mansion CHSL. through Hon'ble
Secretary, Chairman and Ors.

..Respondents

.....

Mr. Vishal Kanade i/b. Usha R. Tiwari, Advocate for Petitioners.

Mr. N. M. Bhadrashete, Advocate for Respondent No.1.

Ms. V. S. Nimbalkar, AGP for Respondent Nos.2 & 3 / State.

CORAM : C.V. BHADANG, J.

DATE : 25th FEBRUARY, 2020

PC.

. The challenge in this petition is to the order dated 4/7/2018 passed by the third respondent in Revision Application No.21/2017. By the impugned order, the revisional authority has set aside the order dated 29/12/2016 passed by the second respondent, thereby refusing to grant certificate of recovery under section 101 of the Maharashtra Co-operative Societies Act ('Act' for short). The second respondent had found that there are disputed questions of fact involved and therefore the appropriate remedy for the parties is to raise a dispute under Section 91 of the said Act. The revisional authority has set aside the said order and has remitted the matter back to the second respondent for deciding the application for grant of recovery certificate, afresh.

2. I have heard the learned counsel for the petitioner and learned counsel for the respondent. Perused record.

3. Mr. Kanade, the learned counsel for the petitioner has taken me through the order passed by the second respondent as well as the order passed by the revisional authority. It is submitted that there is a serious dispute as to whether the respondent No.1 is a member of the first respondent Society. It is submitted that there is also a dispute about ownership of the garage as according to the petitioner, the garage is not part of the building which is belonging to the first respondent society. It is submitted that there is also a genuine dispute about area of the garage and about its possession. Learned counsel has pointed out that admittedly from 1998 to 2010 the society has not raised any bills on the petitioners and therefore even the amount which is recoverable is seriously disputed.

4. On the contrary, the learned counsel for the first respondent has taken me through the order of the revisional authority in order to submit that revisional authority has found that there is enough material to show that the petitioner No.1 is a member of the society and had also attended its meetings. It is submitted that the order of the revisional authority is well reasoned and needs no interference.

5. I have considered the submissions made.

6. Normally this Court would be slow in interfering with an order of mere remand, as any such order, does not result in any manifest injustice requiring interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of

India. It is true that when bonafide and genuine disputed questions of fact are involved, the appropriate remedy would be under section 91 of the said Act. However, the question whether there are any such issues involved would depend upon facts and circumstances of each case. Prima facie, at this stage, the revisional authority on the basis of examination of the record has found that no such questions are involved and the matter can be decided within the parameters and the powers available under section 101 of the said Act. Prima facie, in my opinion, the factum of the petitioner No.1 being a member in relation to any unit / tenement or garage in the present case can be examined on the basis of documentary evidence which can be produced by the first respondent. Considering the over all circumstances, I do not find that a case for interference is made out in the impugned order. However, at the same time, the impugned order passed by the revisional authority cannot be read to mean that all such contentions which may be available to the petitioner to urge that the remedy under section 101 of the Act is not a appropriate remedy, cannot be said to be closed. Thus, the petitioners would be entitled to raise all such contentions as may be available to them both in law and on facts before the learned Deputy Registrar. Subject to this, the petition is dismissed with no order as to costs.

C.V. BHADANG, J.