

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2021.09.04
11:20:56
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4713/2021

Khawaja Garib Nawaz (KGN) Petitioner
CHS Ltd.

Vs.

Dy. Registrar of Coop. Societies & Ors. Respondents

Mr. Manohar Shetty a/w. Shounak Shetty, Namita Gadge for
the Petitioner
Mr. S. S. Panchpor, AGP for the State
Mr. Vivek Shukla for Respondent No.3

**CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : SEPTEMBER 2, 2021

P.C.

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 29.05.2019 passed by the Dy. Registrar, Cooperative Societies, Mumbai Western Suburban, MHADA, Mumbai under section 154 B-3 of the Maharashtra Cooperative Societies Act, 1960 (said Act) rejecting the Petitioner's Name Reservation Application dated 10.11.2019 and to open the bank account.

2 The learned AGP for the Respondent State submits that the Writ Petition, as it is filed by the Petitioner is not maintainable in view of section 152 of the said Act. He

submits that an appeal is maintainable against the said order. Section 152 of the said Act reads thus:

152. Appeals. *-(1) An appeal against an order or decision under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21 A, 29, 35, 77 A, 78, 79, 88, and 105 including an order for paying compensation to a society shall lie,--*

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.

(3) An appeal under sub -section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.

3 When this court declined to entertain the Writ Petition as an alternate efficacious remedy is available to the Petitioner, the learned counsel for the Petitioner seeks permission to withdraw the Writ Petition with liberty to file

an appeal under section 152 of the said Act before the competent authority. He submits that in the present proceedings, they had filed the present Writ Petition on 02.01.2020. He submits that because of pendency of the present Writ Petition, now there is a delay in filing the appeal. He submits that in the interest of justice this Hon'ble Court be pleased to direct the Authority to decide the appeal on merits without considering the point of limitation.

4 The learned counsel for the Petitioner submits that the advocate on record is ready to give in writing that the Petitioner wants to withdraw the Writ Petition with liberty to file an appeal under section 152 of the said Act. To that effect he has given in writing. Same is taken on record and marked "X" for identification.

5 Hence, the following order is passed:

a. The Writ Petition stands disposed of as withdrawn with liberty as prayed for.

b. It is made clear that if an appeal is preferred by the Petitioner under section 152 of the said Act challenging the order dated 29.05.2019 passed by the Dy. Registrar Cooperative Societies, Mumbai Western Suburban, MHADA, Mumbai under section 154 B-3 of the said Act, within two weeks from today, the Authority is directed to decide the same on merits without considering the point of limitation.

- c. All contentions of the parties are kept open.
- d. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)