

**BASAVRAJ
GURAPPA
PATIL**

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

WRIT PETITION NO.3613/2021

Mrs. Sonal H. Shah & Ors.

..... Petitioners

Vs.

**The Hon'ble Divisional Joint
Registrar, Cooperative Societies,
Mumbai & Ors.**

..... Respondents

**Mr. Amit Lohia I/b. Usha R. Tiwari for the Petitioners
Mr. V. S. Gokhale, "B" Panel Counsel for the State
Mr. Anilkumar Patil for the Respondent Nos.3 to 5**

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

DATED : AUGUST 3, 2021

P.C.

1 Heard.

Rule.

Rule is made returnable forthwith.

**2 By consent of the parties, the matter is taken up for
final hearing at the stage of admission itself.**

**3 By this petition under Article 227 of the Constitution
of India, the Petitioner challenges the order dated
06.07.2021 passed by the Divisional Jt. Registrar,
Cooperative Societies, Mumbai Division, Mumbai dismissing
the Petitioner's appeal No.309/2019, for default.**

4 The learned counsel for the Petitioners submits that in the present proceedings, initially, the Dy. Registrar, Cooperative Societies, H/West Ward Region, Mumbai has passed order dated 08.11.2019 under section 78A(1)(b) of the Maharashtra Cooperative Societies Act, 1960 removing the members of the Managing Committee i.e. the Petitioner Chairman, Secretary and the Treasurer. The English translation of the operative order dated 08.11.2019 reads thus:

ORDER

“In view of powers conferred on me as per provisions of section 77(A)(1)(b-1) of Maharashtra Cooperative Society Act 1960 I Shri B. S. Katre, Deputy Registrar, CS, H West Ward, Mumbai hereby remove the present managing committee Chairman Shrimati Sonal Shah, Secretary Shri Dipak Desai and Treasurer R. P. Agarwal (wrongly written as Arti Agarwal) of Santacruz Rameshwar premises CHS Ltd., SV Road, Opp. Khira Nagar, Santacruz (W), Mumbai – 54. Also as per section 78(A)(1)(b) they are disqualified from being re-elected, re-nominated or re-co-opted for one term as committed member of the society.”

5 The learned counsel for the Petitioners submits that being aggrieved by the said order, the Petitioners preferred an Appeal under section 152 of the said Act being Appeal No.309/2019 on 30.11.2019 before the Divisional Joint Registrar of Cooperative Societies, Mumbai. He submits that in that appeal, the Petitioners had preferred an Application for stay. He submits that after hearing both sides, the Divisional Jt. Registrar, Cooperative Societies, Mumbai Division, Mumbai, by its order dated 07.01.2020 stayed the order dated 08.11.2019 passed by the Dy.

Registrar Cooperative Societies H/West, Mumbai under section 78(A)(1)(b) of the said Act, till the next date.

6 The learned counsel for the Petitioners submits that time and again, the matter appeared for hearing on board before the Divisional Jt. Registrar, Cooperative Societies, Mumbai. He submits that as inadvertently none appeared for the Petitioner for last 4 occasions, the Dy. Registrar, Cooperative Societies has passed the impugned order dated 06.07.2021 dismissed the Petitioner's appeal for default.

7 The learned counsel for the Petitioners submits that thereafter the Petitioners immediately filed Application for restoration of the appeal on 16.07.2021 when the Authority issued notice to both the parties and kept the matter for hearing on 31.08.2021, in the meanwhile, the Dy. Registrar, Cooperative Societies, by order dated 14.07.2021 under section 77(A)(1)(b) of the said Act appointed a Board of Administrator. The English translation of the operative part of the order dated 14.07.2021 reads thus:

"In view of powers conferred on me as per provisions of section 77(a)(b-1) of MCS Act 1960, I Shri H. R. Jagtap, Dy. Registrar, CS, H West Region, Mumbai, hereby dismiss the present managing committee of Santacruz Rameshwar Premises CHS Ltd., S.V.Road, Opp. Khira Nagar, Santacruz (W), Mumbai - 54 and for the purpose of looking after the day to day affairs of the society hereby appoint (1) Mr. Paresh Shah - Chairman - Board of Administrator (2) Dr. Hemal Bhagat, Member - Board of Administrator and (3) Shri Rajiv Mehta - Board of Administrator.

The appointed Board of Administrator hold the elections of the Society in the prescribed time period and submit a report accordingly to this office."

8 The learned counsel for the Petitioners submits that pursuant to the said order the contesting Respondents are trying to forcibly take over the management of the society from the Petitioner. Hence, the present Writ Petition has been filed restraining the Respondents not to take any coercive action till hearing and final disposal of the Appeal No.309/2019 which stood dismissed for non prosecution. He submits that the Petitioner has good chance of success in the mater. He submits that bare reading of interim order dated 07.01.2020 passed on the Application for stay itself, shows that the Petitioner has good chance of success in the matter. He submits that in the interest of justice this Hon'ble Court be pleased to restrain the Respondents from taking any coercive action against the Petitioners till hearing and final disposal of the present Writ Petition and /or the Application filed by them for restoration of Appeal No.309/2019. He submits that this Hon'ble Court be pleased to restore the Appeal No.309/2019 before the Dy. Jt. Registrar of Cooperative Societies and direct the Authorities to decide the same as early early as possible on its own merits. He submits that if the interim protection is not granted, irreparable loss will be caused to them.

9 On the other hand, the learned counsel for Respondent No.3 to 5 has vehemently opposed the Writ Petition. He submits that bare reading of order dated 06.07.2021 passed by the Dy. Jt. Registrar dismissing the appeal No.309/2019 for non prosecution clearly shows that the Petitioners are not interested in this litigation. He submits that none

appeared for them before the Authority on four occasions. He submits that in any case, there is no substance in the issues raised by the Petitioner in the Writ Petition. Hence, same is liable to be dismissed with costs.

10 The learned counsel for Respondent No.3 to 5 submits that if this court comes to the conclusion that during pendency of the Application filed by the Petitioner for restoration of the Appeal No.309/2019, the Petitioner is entitled to the interim protection, in that case, instead of granting ad-interim relief, this Hon'ble Court be pleased to direct the Dy. Jt. Registrar to decide appeal No.309/2019 on merits as early as possible, but in any case, on or before 31.08.2021.

11 The learned AGP for the Respondent State also opposed the present Writ Petition. He submits that the Petitioner has failed and neglected to give sufficient cause for non appearance for more than 4 occasions. Hence, the Petition is liable to be dismissed with costs.

12 We heard both sides at length. It is to be noted that, in the present proceedings, it remained on the part of the Petitioner to appear before the Authority on four occasions. In any case, bare reading of the interim order dated 07.01.2020 shows that prima facie it seems that the Petitioner has some chances in the present litigation. In any case, the Application filed by the Petitioner for restoration of Appeal No.309/2019 is pending for hearing and final disposal on merits.

13 Respondent nos.3 to 5 have no objection if Appeal No.309/2019 is restored on file for hearing and final disposal on merits and same shall be disposed of as early as possible, but in any case, on or before 31.08.2021. Hence, the present Writ Petition is disposed of with following directions.

- a. Order dated 06.07.2021 passed by the Dy. Jt. Registrar, Cooperative Societies, Mumbai dismissing the Appeal No.309/2019 is set aside.
- b. Application dated 16.07.2021 filed by the Petitioner for restoration of the Appeal No.309/2019 is allowed.
- c. Appeal No.309/2019 is restored to file before the Dy.Jt. Registrar, Cooperative Societies, Mumbai for hearing and final disposal on merits.
- d. The Dy. Jt. Registrar of Cooperative Societies, Mumbai to hear Appeal No.309/2019 on merits and same shall be decided on or before 31.08.2021 on merits.
- e. Rule is made absolute in terms of the above.
- f. Parties to act on an authenticated copy of this order.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)