

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.155 OF 2011.

IN

WRIT PETITION NO. 4302 OF 2008

Gondia District Central
Co-operative Bank Ltd.,
Gondia through the
Chairman/General Manager

..... **APPELLANT**

...V E R S U S...

1. The State of Maharashtra,
Through the Secretary,
Cooperation Department, Mantralaya,
Mumbai- 400 032.
2. The Commissioner for Cooperation
and Registrar, Cooperative Societies,
Pune
3. Divisional Joint Registrar,
Cooperative Societies,
Nagpur
4. Smt. Rukminidevi Shankarlal Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia. (Dead)

Through legal Heirs
4A] Palak Maheshkumar Agrawal
4B] Preeti Paresh Doshi
4C] Harsh Rajkumar Agrawal.
4D] Vrushab Rajkumar Agrawal.
4E] Shivani Suresh Agrawal.
4F] Laksh Suresh Agrawal.
4G] Ankita Parag Agrawal.
4H] Reshma Praful Agrawal.
4I] Swati Vishal Agrawal

Common Address : Adv. Shankar
Borkuta Bhavan, In front of
Police Station, Main Road,
Gondia, Distt. & Tah. Gondia.

5. Gopaldas Shankarlal Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
6. Maheshkumar Shankarlal Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
7. Sureshkumar Shankarlal Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
8. Rajkumar Shankarlal Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
9. Mrs. Umadevi Gopaldas Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
10. Mrs. Kummudevi Maheshkumar Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.

11. Mrs. Nitudevi Sureshkumar Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
12. Mrs. Sunitadevi Rajkumar Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.
13. Vishal Gopaldas Agrawal,
Aged Major, resident of
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14. Praful Gopaldas Agrawal,
Aged Major, resident of
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Tah. & Distt. Gondia.
15. Parag Maheshkumar Agrawal,
Aged Major, resident of
Shankar Bhavan, Infront of Police
Station, Main Road, Gondia,
Tah. & Distt. Gondia.

...RESPONDENTS

Shri M. V. Samarth, Sr. Advocate a/w. Shri V. P. Ingle, Advocate for
appellant
Shri A. S. Fulzele, AGP for respondent Nos. 1 to 3
Shri A. S. Jaiswal, Sr. Advocate a/w. Shri Rohit Joshi, Advocate for
respondent Nos. 4 to 15

CORAM : A. S. CHANDURKAR AND G. A. SANAP JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : 25.10.2021
DATE ON WHICH JUDGMENT IS PRONOUNCE : 17.11.2021

ORAL JUDGMENT (Per : G. A. Sanap, J.)

The learned Single Judge by order dated 09.06.2009 decided the Writ Petition No. 4302 of 2008, filed by the appellant and Writ Petition No. 3088 of 2008, filed by the respondent Nos. 4 to 15, against the order dated 10.09.2007 passed by the Divisional Joint Registrar Co-operative Societies, Nagpur. The Divisional Joint Registrar Co-operative Societies, Nagpur had allowed the application made by the respondent Nos. 4 to 15 and directed the appellant-Bank to grant membership to the respondent Nos. 4 to 15 being the nominees of late Shri Shankarlal Agrawal. The learned Single Judge by the impugned order dismissed the writ petition filed by the appellant-Bank and allowed the writ petition filed by the respondent Nos. 4 to 15 and directed the appellant-Bank to transfer the shares and grant membership to the respondent Nos. 4 to 15, subject to provisions of Section 30 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCS Act") and Rule 25 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "MCS Rules"). The appellant-Bank has challenged the Judgment of the learned single Judge in this Letters Patent Appeal.

2] The facts leading to this appeal are as follows:

Deceased - Shankarlal Agrawal was share holder/member of the appellant-Bank and was holding 20 shares. He expired on 03.09.2005. Before his death, by letter dated 04.11.2003, he had nominated respondent Nos.4 to 15 and informed the appellant-Bank to transfer his shares in the name of the respondent Nos. 4 to 15 after his death. The respondent Nos. 4 to 15, after his death made an application to the Chairman of the appellant-Bank for transfer of the shares to their names, in view of the family arrangement arrived at between them. It was the case of the respondent Nos. 4 to 15 that the appellant-Bank did not take cognizance of their application, made under Section 30 of the MCS Act, for transfer of shares. The appellant-Bank rejected the said application without mentioning the valid reasons. The respondent Nos. 4 to 15 on rejection of their application, by the Bank, made an application before the Divisional Joint Registrar Co-operative Societies, Nagpur and prayed for transfer of the shares held by Shankarlal Agrawal to their names. The said

application was allowed vide order dated 10.09.2007 by the Divisional Joint Registrar Co-operative Societies, Nagpur.

3] The appellant-Bank opposed the said application by raising multiple grounds. According to the appellant, the application was not maintainable under Section 30 of the MCS Act. The appellant-Bank had an imperative right to take decision in the matter. Accordingly, the appellant-Bank took a decision to return Rs.500/- being the price of the share to the respondent Nos.4 to 15. It is further contended that the appellant-Bank was required to take this decision in view of the directions of Reserve Bank of India. According to the appellant-Bank, the Reserve Bank of India had directed the Co-operative Societies to discourage the individual membership of the Central Financing Agencies like District Central Co-operative Banks. The Banks were directed to reduce the membership by redeeming shares of the existing individual member wherever possible and not to admit new individual membership in the Bank. The decision was taken in

this case consistent with this policy, on 31.03.2007, to refund the value of the shares to the respondent Nos. 4 to 15.

4] The Divisional Joint Registrar Co-operative Societies, Nagpur allowed the application made by the respondent Nos. 4 to 15. However, there was no specific direction for transfer of shares. The respondent Nos.4 to 15 felt aggrieved by the said order. The appellant-Bank also felt aggrieved by the order of partly granting the application. Therefore, the above writ petitions were filed by both the parties. The learned Single Judge dismissed the writ petition filed by the appellant-Bank and allowed the writ petition filed by the respondent Nos.4 to 15 and directed the appellant-Bank to transfer shares held by the deceased member in the name of the respondent Nos. 4 to 15 by following the provisions of Section 30 of the MCS Act and Rule 25 of the MCS Rules or any other rule applicable and after following procedure laid down therein. The appellant-Bank being aggrieved by this Judgment preferred this Letters Patent Appeal.

5] We have heard the learned Senior Advocate appearing for the appellant-Bank as well as the learned Senior Advocate appearing for the respondents. We have gone through the record and proceedings.

6] The learned Senior Advocate Shri M. V. Samarth for the appellant submitted that the decision taken by the appellant-Bank to reject the application made by the respondent Nos. 4 to 15 for transfer of shares was on the ground of policy of Reserve Bank of India. The learned Advocate took us through the provisions of Section 23 of the MCS Act and Rule 19 of the MCS Rules and submitted that the Registrar, ought to have rejected the application, in as much as, it was not made under Section 23 of the MCS Act in compliance with Rule 19 of the MCS Rules. In the submission of the learned Senior Advocate, in this case Section 30 of the MCS Act could not have been invoked to grant the application of the respondent Nos. 4 to 15 without aid of Section 23 of the MCS Act. The learned Senior Advocate submitted that this position is implicit in view of the first proviso to Section 30 of the MCS Act. The learned Senior Advocate submitted that the

Registrar invoked the provisions of Section 79 of the MCS Act without jurisdiction, in as much as, Section 79 of the MCS Act totally deals with a issue not related to either grant of membership or a transfer of the membership of the Society. The learned Senior Advocate submitted that the remedy provided against the order of rejection of the application for grant of membership or for transfer of a membership, is the appeal under Section 23(2) or Revision under Section 154 of the MCS Act. The learned Senior Advocate submitted that the learned Single Judge has not taken all these aspects into consideration and came to the wrong conclusion. In order to support his submission, the learned Senior Advocate has placed reliance on following three judgments.

- i] President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd., Buldana .v/s. Ramchandra Damodar Umalkar and Oths., reported in 1967 Mh.L.J.473
- ii] Mohanlal Bhagwan Pandey .v/s. Apurva Co-op. HSG. Soc. LTD., Bombay and Oth., reported in 2009 (5) Mh.L.J. 330
- iii] Rajaram Bapu Patil Sahakari Sakhar Karkhana Ltd. & Anr. .v/s. Commissioner of Sugar & Ors., reported in 2006 (5) Bom.C.R.537

7] The learned Senior Advocate Shri. A. S. Jaiswal for respondent Nos. 4 to 15, supported the Judgment and order passed by the learned Single Judge. The learned Senior Advocate submitted that on the basis of the administrative instructions and the policy/guidelines provided in the letter dated 28.09.1960, the substantive rights of the party cannot be taken away. The learned Senior Advocate submitted that the amendment in the bye-laws consistent with the policy/guidelines of the Reserve Bank of India, could not take away the substantive rights of the respondents under Section 30 of the MCS Act. The learned Senior Advocate submitted that in this case Section 30 of the MCS Act would be applicable and not Section 23 of the MCS Act. The learned Senior Advocate took us through the provisions of Sections 23 and 30 of the MCS Act and pointed out that both these sections operate in two different situations and sphere. The learned Senior Advocate in short submitted that when it comes to decide the issue of transfer of a share of the deceased member, recourse has to be taken to the provisions of Section 30 of the MCS Act and not to Section 23 of the MCS Act which primarily deals with the

admission of the member at the initial stage. The learned senior Advocate further submitted that the provisions of Section 30(1) of the MCS Act are mandatory and therefore, the proviso to this sub section has to be read harmoniously to sub-serve the object of the law makers spelt out under Section 30(1) of the MCS Act. The learned senior Advocate submitted that bye-law No. 9(B) provides a remedy to legal heir for a transfer of shares and for the said purpose the legal heir has to go before the Registrar. The learned senior Advocate submitted that the learned Single Judge has properly appreciated the material placed on record and has come to a right conclusion. The learned senior Advocate submitted that in the background of the facts and mandatory provisions of Section 30 of the MCS Act, the preposition of law laid down in the Judgments relied upon by the learned Senior Advocate for the appellant would not apply to the facts of this case.

8] Before proceeding to deal with the settled legal position which can be culled out from the judgments relied upon by the learned Senior Advocate for the appellants and some other decisions, it would be necessary to deal with the submissions on

the touch stone of the applicable provisions of law in the given situation to the proved facts. Admittedly, deceased Shankarlal Agrawal held 20 shares of the appellant-Bank. He expired on 03.09.2005. The respondent Nos. 4 to 15, being his legal heirs, applied for transfer of those 20 shares in their name in the proportion mentioned by them against their names in the application. The appellant-Bank relying upon the instructions mentioned in the letter dated 05.07.2000 refused to transfer the shares in the name of the respondent Nos. 4 to 15 by passing the resolution to that effect. The respondent Nos. 4 to 15, being aggrieved, made an application to the Joint Registrar for transfer of shares held by deceased Shankarlal Agrawal in their names. The Divisional Joint Registrar partly allowed their prayers. Since the learned Senior Advocate for the appellant relying upon the letter dated 05.07.2000 tried to convenience us that this letter would stand in the way of the Joint Registrar, it would be necessary to reproduce the letter dated 28.09.1960. This letter was addressed by the Registrar Cooperative Societies, Maharashtra

State, Poona to the Chairman of the All Central Co-operative Banks in Maharashtra State. The relevant portion reads thus:

“You are already aware that according to the recommendations of the Rural Credit Survey Report and as advised by the Reserve Bank of India many times, individual membership of the Central Financing Agencies is to be discouraged and they are expected to work as federal bodies for their affiliated cooperative only. It is therefore, necessary to see that not only the existing membership of the Central Financing Agencies is reduced to a minimum but also no fresh individuals are admitted to the membership of the Banks. Necessary instructions in this behalf have already been given to the Banks from time to time but it is observed that instead of taking action in reducing their individual membership of the Central Financing Agencies according to the accepted sound principle new members in a large number are still being enrolled by some of the Central Cooperative Banks which is definitely neither desirable nor fitting in with the principles laid down by the Department. All the Central Cooperative Banks are, therefore, requested to pay immediate attention to this important matter right earnestly and take necessary steps to implement the above suggestion by reducing the individuals membership and making a firm policy not to admit any new individual members to the membership of the Bank.”

9] The question is whether the instructions/ guidelines of the Reserve Bank of India would stand in the way of the respondent Nos. 4 to 15 for getting the shares transferred to their names. The perusal of the letter would show that the Reserve Bank of India issued the instructions with a view to reduce the

individual membership to minimum. Further perusal of the instructions would show that the Reserve Bank of India was constrained to issue the instructions to put a break on the Co-operative Banks because the Co-operative Banks were admitting new individual members contrary to the fundamental objective of the Co-operative Bank. In view of this policy decision, the Co-operative Banks were required, as far as possible, to reduce the existing membership and not to admit the new members. The mechanism provided in the instructions could be utilized by the Bank concerned to persuade the individual members to accept the price of the shares on giving up the membership. Further perusal of the instructions would show that the same are not intended to take away the rights of the heirs, for transfer, provided under Section 30 of the MCS Act. It is further pertinent to note that the Reserve Bank of India even would not have right to issue instructions to prohibit the transfer of shares to the heirs of the deceased members. It is pertinent to mention that the transfer of shares by the members in both the situations namely during lifetime or after the death of the member has to be done pursuant

to the legislative act and not by administrative instructions. We are, therefore, of the opinion that despite the instructions issued by the Reserve Bank of India, the heir of the deceased member of the society would be entitled for transfer of a share in his or her name on proof of nomination or heirship. In our opinion, the shares cannot be compulsorily redeemed against the wish of the member as provided by the law.

10] The learned Senior Advocate has placed reliance on the relevant model bye-laws regarding individual membership of a Central Financing Agencies to derive support to his submissions. In order to appreciate the submission in proper perspective it would be necessary to reproduce the same. It reads thus:

“Model bye-laws regarding individuals membership of Central Financing Agencies.

Under the heading ‘Capital’

3(A): The Bank may by a special Resolution of its Board or Directors in that behalf and with the previous sanction of the Registrar pay off shares issued to individual members at a sum representing the value of the shares as ascertained in accordance with the provisions in the Bombay Cooperative Societies Act 1925 and Rule thereunder.

Under the heading the powers and duties of the Board.

“31 (22):- to call in and redeem shares in the Bank held by individual members with previous sanction of the Registrar in accordance with the provisions of the Byelaw No.3(A).

Bye law No.31(1): To deal with applications for membership and to allot shares subject to the provisions contained in byelaw No. under the heading “membership.”

Under the heading “membership”

Bye law No. 9(B): Notwithstanding any thing contained in this byelaws or any other byelaws no fresh shares should be issued to the existing individual members and no individuals would be admitted to the membership of the Bank without express previous permission of the Registrar therefore.”

11] Minute perusal of the bye-laws would show that same do not provide that upon death of a member, his shares should be compulsorily redeemed in favour of the heirs. The bye-laws only provide a restrictions on admission of new members. In our opinion, therefore, neither the policy of the Reserve Bank of India nor the bye-laws relied upon would stand in the way of the respondents to apply for a transfer and entitlement for the transfer within the four corners of the law.

12] In order to appreciate the submissions advanced by the learned Senior Advocates on the point of application of either

Section 23 or Section 30 of the MCS Act, it would be necessary to make a mention of an important aspect. It is pertinent to note that the deceased during his lifetime had nominated the respondent Nos. 4 to 15 for transfer of his shares after his death. Similarly, during his lifetime neither deceased on his own intended to redeem his shares nor the appellant-Bank insisted him to redeem the shares. Perusal of Sections 23 and 30 of the MCS Act, in this context assumes importance. Section 23 of the MCS Act read with Rule 19 of the MCS Rules primarily deals with the acceptance of the initial open membership. The deceased was admitted as a member by invoking the provisions of Section 23 of the MCS Act. The perusal of Section 23 of the MCS Act would strikingly make it clear that it deals with acceptance of the fresh membership at the inception. Section 23 of the MCS Act provides the complete mechanism to redress grievance of the refusal to accept the membership. The aggrieved person can take recourse to the remedy of appeal. Section 24 of the MCS Act deals with the nominal and associate member. Section 25 deals with the aspect of cessation of membership. Section 26 provides the rights and

duties of members. It is seen that Section 30 of the MCS Act is the last section in the scheme, which provides for the transfer of interest on death of member. In order to have a first hand account of the section we propose to reproduce same. It reads thus:

“30. Transfer of interest on death of member

(1) On the death of a member of a society, the society shall transfer the share of interest of the deceased member to a person or persons nominated in accordance with the rules, or, if no person has been so nominated to such person as may appear to the committee to be their or legal representative of the deceased member.

***Provided** that such nominee, heir or representative, as the case may be, is duly admitted as a member of the society:*

***Provided further** that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society.*

(2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value or the share or interest of the deceased members, ascertained in accordance with the rules.

(3) A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(4) All transfers and payments duly made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.”

13] Perusal of Section 30(1) of the MCS Act would show that it provides a mandate to the society for transfer of the share or interest of the deceased member to a person or persons nominated by the deceased member or, if no person has been nominated to such person as may appear to the committee to be the heir or legal representative of the deceased member. The first proviso is that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society. In our opinion, this proviso needs to be read in harmony with sub-section (1). If so read, it would show that it speaks about the admission of the legal heirs or a nominee on transfer of a share. This proviso could not be said to have intended to first admit the nominee, heir or legal representative and then effect the transfer. In our opinion, conjoint reading of Section 30 (1) of the MCS Act and proviso would show that first the transfer must take place and then the process of admission must follow. In this context it would be necessary to mention that the society has no option/choice in the matter of a transfer. The choice/option is with the nominee, heirs or legal representative as provided under Section 30 (2) of

the MCS Act. The nominee, heir or legal representative, may require the society to pay value of the shares or the interest of the deceased member. Section 30(4) of the MCS Act provides that all transfers and payments can be valid and effectual against any demand made upon the society by any other person. So perusal of Section 30 of the MCS Act would clearly indicate that the society has no option but to comply the mandate of Section 30 (1) on the death of the deceased member to transfer the share as per the wish of the deceased member or in favour of the heir or legal representative. The nominee/legal heirs have a choice not to insist for transfer and to get away by accepting the share price or interest. It is, therefore, pertinent to mention that if the submissions of the learned Senior Advocate for the appellant are accepted then the legal heirs of the deceased member would be required to undergo the rigmarole from Section 23 of the MCS Act for becoming the member. In our opinion, it is not intended by the legislature. If this was the intention of the legislature, then Section 30 would not have been the part of the MCS Act. Rule 25 of the MCS Rules will have to be read in conjunction with Section

30 and not in conjunction with Section 23 of the MCS Act. Rule 25 of the MCS Rules lays down the procedure for the transfer of the shares of the deceased member either in favour of nominee or in favour of heir or legal representatives. Whereas, Rule 19 of the MCS Rules deals with the procedure at the stage of admission of the member in terms of Section 23 of the MCS Act. The separate procedure to deal with two different situations clearly indicates the intention of the legislature to provide different remedies in different situations. It, therefore, goes without saying that the society is bound to transfer the shares of the deceased member to the respondent Nos. 4 to 15. It is needless to mention that for the purpose of effecting transfer the provisions of Rules 22, 23 and 25 of the MCS Rules would be required to be considered.

14] Before proceeding to consider the judgments relied upon by the learned Senior Advocate for the appellant it would be advantageous to consider the law laid down by the Hon'ble Supreme Court of India in the case of *Indrani Wahi .v/s. Registrar of Co-operative Societies and oths., reported in, (2016) 6 SCC 440*

and the learned Single Judge in the case of *Virendra Bhanji Rathod and Oths .v/s. Anand Vihar Co-operative Housing Society Ltd., Mumbai and oths., reported in 2004 (1) Mh.L.J.656*. The similar question fell for consideration in the aforesaid two decisions. The Hon'ble Supreme Court was dealing with the transfer of the shares of deceased member of the Co-operative Society under Sections 79 and 80 of the West Bengal Co-operative Societies Act, 1983 and the procedure provided for the said purpose under Rule 127 & 128 of West Bengal Co-operative Societies Rules, 1987. It is necessary to state that Sections 79 and 80 of the West Bengal Co-operative Societies Act, 1983 are in *pari materia* with Section 30 of the MCS Act. Similarly, the provisions of Rule 127 and 128 of the West Bengal Co-operative Societies Rules, 1987 are in *pari materia* with Rule 25 of the MCS Rules. While answering the identical question, the Hon'ble Supreme Court has held that the transfer of shares or interest based on a nomination under Section 79 in favour of the nominee is with reference to the co-operative society concerned and the same is binding on the said society. The Co-operative Society has no option whatsoever except

to transfer the membership in the name of the nominee in consonance with Sections 79 and 80 of the West Bengal Co-operative Societies Act, 1983 read with Rules 127 and 128 of the West Bengal Co-operative Societies Rules, 1987.

15] In the case of *Virendra Bhanji Rathod and Oths .v/s. Anand Vihar Co-operative Housing Society Ltd., Mumbai and oths. (cited supra)*, the learned Single Judge has held that the Section 23 of the MCS Act speaks of open membership and Section 30 of the MCS Act provides for the transfer of the share of the deceased member. It is held that if under Section 30 a person is entitled to be enrolled as a member having acquired such a right by way of inheritance then unless such right can be curtailed under any provision of law or under the bye-laws of the society for the valid or lawful reasons no society would be entitled to refuse such right to the heir/legal representative. It is held that merely because of the death of the member the right of heir/legal representative to claim membership for the value of share or the interest in terms of Section 30 of the MCS Act is not taken away. In our opinion, the

above two decisions settled the law on this subject. It would be squarely applicable to the facts of this case.

16] It would be necessary to consider the decisions relied upon by the learned Senior Advocate for the appellant in the case of *President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd., Buldana .v/s. Ramchandra Damodar Umalkar and Oths. (cited supra)*. In this case the Division Bench of this Court has considered the rights of a person to become a member under Section 23 of the MCS Act and the remedy in case the membership is refused. It is held that if the majority of members of a society do not feel that admission of the person to the membership of the society would be in the interest of the society, such person should not be forced on the society as member. In our opinion, this decision would be of no help to the case of the appellant in as much as the dispute needs to be resolved in this case is governed by Section 30 and not by Section 23 of the MCS Act. The law laid down by the Hon'ble Supreme Court and the Single Judge of the Bombay High Court in *Indrani Wahi .v/s. Registrar of Co-operative Societies and oths. (cited*

supra) and *Virendra Bhanji Rathod and Oths .v/s. Anand Vihar Co-operative Housing Society Ltd., Mumbai and oths. (cited supra)* would be applicable. In view of this position, the submissions advanced by the learned Senior Advocate for the appellant based on Section 23 of the MCS Act and Rule 19 of the MCS Rules cannot be sustained.

17] The learned Senior Advocate for the appellant submitted that the Joint Registrar has wrongly taken recourse to the provisions of Section 79 of the MCS Act and as such committed the jurisdictional error while granting the application made by the respondent Nos. 4 to 15. To substantiate this submission strong reliance has been placed on the decision in the case of *Mohanlal Bhagwan Pandey .v/s. Apurva Co-op. HSG. Soc. LTD., Bombay and Oth. (cited supra)* and *Rajaram Bapu Patil Sahakari Sakhar Karkhana Ltd. & Anr. .v/s. Commissioner of Sugar & Ors.(cited supra)*. Before proceeding to consider the applicability of the law laid down in the decisions, it would be necessary to state that the learned Single Judge based on the interpretation of provision of Section 79(2) of the MCS Act has

rejected this submission. It would be appropriate at this stage to reproduce Section 79 of the MCS Act. It reads thus:

“Section 79 Society’s obligation to file returns and statements and Registrar’s power to enforce performance of such obligations:

(1) The registrar may direct any society or class of societies, to keep proper books of accounts [in such form, including electronic or any other form, as may be prescribed] with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(1A) Every society shall file returns within six months of the close of every financial year to which such accounts relate, to the Registrar or to the person authorised by him. The returns shall contain the following matters, namely:-

- (a) annual report of its activities;*
- (b) its audited statement of accounts;*
- (c) plans for disposal of surplus funds as approved by the general body of the society;*
- (d) list of amendments to the by-laws of the society, if any;*
- (e) declaration regarding date of holding of its general body meeting and conduct of elections when due;*
- (f) any other information required by the Registrar in pursuance of any of the provisions of this Act.*

(1B) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by a State Government in this behalf, appointed in the general body meeting together with his written consent, within a period of one month from the date of annual general body meeting.

(2) Where any society is required to take any action [including filing of returns] under this Act, the rules or the bye-laws, or to comply with an order made under the [forgoing sub-sections], and such action is not taken.-

(a) within the time provided in this Act, the rules or the bye laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing

the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding [one hundred rupees] as the Registrar may think fit for each day until the Registrar's directions are carried out.

(4) The Registrar or the authorised person on his behalf shall scrutinise the returns and information so received and take further necessary action, if required."

18] Section 79 (1) vest the Registrar with the powers to direct the society to keep proper books of account etc. Sub Section (1) has no relevance in our case. Sub Section (2) has relevance. Sub Section (2) *inter alia* vest the Registrar with the power to direct the society to take any action under this Act, the rules or the bye-laws, or to comply with an order made under Sub Section (1). Sub Section (2) cannot be correlated only with the compliance of the directions under Sub section (1). However, it

has to be held as a general provision empowering the Registrar to require a society to take any action under this Act, the Rules or the bye-laws. It is not out of place to mention that the action mandated to be taken by the society under Section 30 (1) of the MCS Act would squarely fall within the jurisdiction of the Registrar in terms of Section 79(2). If Sections 30 and 79 (2) are read together it would show that the submission advanced on the basis of the policy/guidelines of the Reserve Bank of India lays down in the letter dated 28.09.1960 would be of no significance. Before proceeding to consider the prepositions in the relied judgments it would be necessary to state that since Section 23 of the MCS Act was not applicable in this case, the respondents could not have been called upon to take recourse to the remedy of appeal on refusal of transfer of shares as provided under Section 79(2). Similarly, the recourse could not have been taken by the respondent Nos. 4 to 15 to the remedy of Revision as provided under Section 154 of the MCS Act, in as much as, the order assailed before the Registrar was not passed by any officer subordinate to the Registrar. The order of refusal of transfer of

shares was passed by the appellant- Bank. Therefore, there was no question of taking recourse to the remedy of Revision as provided under Section 154 of the MCS Act.

19] In the case of *Mohanlal Bhagwan Pandey .v/s. Apurva Co-op. HSG. Soc. LTD., Bombay and Oth. (cited supra)*, the learned Single Judge of this Court considered only the provision of Section 79(1) and Section 23 (1A) . The powers of the Registrar provided under Section 79(2) were not specifically considered in this case. The observations made in this judgment are in the context of the subject covered under Section 79(1). In the case at hand the learned Single Judge while allowing the appeal filed by the respondent Nos. 4 to 15 has considered the specific powers of the Registrar under Section 79 (2) of the MCS Act. In the case of *Rajaram Bapu Patil Sahakari Sakhar Karkhana Ltd. & Anr. .v/s. Commissioner of Sugar & Ors.(cited supra)*, the powers of the Registrar under Section 79 of the MCS Act were considered in the backdrop of excessive use of the said power by the Registrar. The Division Bench found that in the facts and circumstances, the action/directions of the Deputy Registrar of the Co-operative

Societies was uncalled for and was in excess of his powers under Section 79 of the MCS Act. The Division Bench has nowhere stated that the Registrar has no power under Section 79 of the MCS Act to take an action to call upon the society to discharge its obligation under the MCS Act. In the case before Division Bench, the Deputy Registrar of the Co-operative Societies had directed the Co-operative Societies to increase the share capital by Rs.10 lacs and further directed that the said share capital be used for giving membership to the concerned applicants/farmers only. The question before the Division Bench was whether this action was in excess of the powers of the Deputy Registrar or not ?. The Division Bench found that it was in excess of the powers under Section 79 of the MCS Act. The Division Bench has not held that the Registrar has no power under Section 79, as provided. In our opinion, therefore, the preposition of the law in two Judgments relied upon by the learned Senior Advocate for the appellant would not be applicable to the facts of this case.

20] In view of the analysis of the facts and the applicable provisions of the law and also the law laid down on the subject in

the decisions, we are of the opinion that there is no substance in the appeal. The learned single Judge, in our opinion, has not committed any error while dismissing the writ petition filed by the appellant and allowing the writ petition filed by the respondent Nos.4 to 15.

21] In view of the above, we do not find the submissions made by the learned Senior Advocate for the appellant sustainable either on facts or in law. The submissions advanced by the learned Senior Advocate for the respondent Nos. 4 to 15 finds support from the facts as well as law and as such deserves acceptance. The appeal is devoid of any substance and therefore, same deserves to be dismissed. Hence, the following order.

ORDER

- i] The Letters Patent Appeal is dismissed.
- ii] Parties to bear their own costs.

JUDGE

JUDGE