

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

**WRIT PETITION NO. 32 OF 2021
ALONGWITH
INTERIM APPLICATION NO. 2583 OF 2021
IN
WRIT PETITION NO. 32 OF 2021**

Usha M. Talreja

Age : 60 years, Occ: Housewife,
C/7, Jeevan Jyot, Plot No. 698/699,
Purshottam Bhagwan CHS Ltd,
14th Road, Khar (W),
Mumbai 400052.

...Petitioner

VS.

1. Deputy Registrar Co-op. Soc.
Through Dy. Registrar B. S. Katara
H/West Ward, 2nd Floor, Above
Bhandari Co-operative Bank Ltd,
P L Kale Guruji Marg, Dadar,
Mumbai 400028.

2. Purshottam Bhagwan CHS Ltd,
Plot No. 698/699, 14th Road,
Khar (W), Mumbai 400052

...Respondents

Mr. Ajay Talreja i/by Mr. Anil Ashok Jakatdar - Advocate for
the Petitioner

Ms. Isha Singh i/by Mr. Prakkash Rohira - Advocate for the
Respondent

Ms. V. S. Nimbalkar - AGP for the State

CORAM : S. M. MODAK, J.

DATE : 15th NOVEMBER, 2022

JUDGMENT :-

SEEMA
KSHITIJ
YELKAR

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1. Heard learned Advocate for the Petitioner - Member of the Society and learned Advocate for the Respondent No. 2-Society and learned AGP for the Respondent No. 1. Also read Order dated 25/07/2022 passed by this Court. This Court directed the Petitioner to substantiate his claim that in absence of findings on merit in first proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act, second proceedings are not maintainable.

2. Accordingly, learned Advocate for the Petitioner has taken me through the contents of both the Orders. In support of his contention, he relied upon the provision of Section 154 of the Maharashtra Co-operative Societies Act.

3. Whereas learned AGP and learned Advocate for the Society reiterated their submissions that present Writ Petition is not maintainable and the Petitioner can file revision application as contemplated under Section 154 of the Maharashtra Co-operative Societies Act.

3. In order to appreciate those submissions, I have perused both the Orders. Vide Order dated 14/03/2019, the Deputy Registrar has rejected the application made by the Society under the provision of Section 101 of the said Act. The society has requested for recovery of Rs. 4,92,019/- from the Petitioner. The learned Deputy Registrar was pleased to reject the application. The Society could not produce the particulars or any explanation in support of their contentions. The order further mentions that the resolution is not filed in order to refer the parking charges.

4. On this background, the Society filed fresh application. Its copy is filed on page no. 116. The title of that application says that it is an application for rectification in the order passed on 14/03/2019. According to the learned Advocate for the Petitioner once the authority has signed the order he has become 'Functus officio' and he cannot rectify the order. He relied upon the judgment in case of Sureshsing Vs. State of Maharashtra and Ors.¹ and

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specifically para no. 17.

5. Learned Advocate for the Society admits that there is a mistake in the title clause of that application but according to her, if the contents of the application are perused one can infer that they have requested the authority to grant the recovery certificate.

6. On this background, it will be material to see the impugned order dated 07/01/2020. After considering the documents, the learned Deputy Registrar has decided to grant recovery certificate for Rs. 4,99,119/-. The present Petitioner was also heard prior to passing of the said order.

7. Learned Advocate for the Petitioner also relied upon the following judgments in order to buttress his submission that the writ petition is maintainable:-

(a) Deorao Vithoba Kale Vs. Divisional Joint Registrar Co-operative Societies Nagpur and Others²

(b) Sureshsing Vs. State of Maharashtra and Ors.³

² 1982 MH. L. J. 543

³ 2021 (6) MHLJ 617

- (c) State Bank of India Vs. S. N. Goyal⁴
- (d) Ramchandra and Another Vs. Collector, Nagpur and Others⁵
- (e) Ramkrishna V. Dist. Deputy Registrar⁶
- (f) A. V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors.⁷
- (g) Smt. Satya Vs. Teja Singh⁸
- (h) M/s. Magadh Sugar and Energy Vs. State of Bihar⁹

8. The sum and substance of his arguments is that if impugned order is passed by not considering the provisions of law or is passed without jurisdiction, certainly this Court can interfere even though alternate remedy is available. In case of Deorao Vithoba Kale (supra), this Court has interfered in view of the fact that the remedy of appeal was time barred and the Division bench of this Court felt that the pure question of law was involved. Whereas in case of the State Bank of India Vs. S. N. Goyal (supra), the pleadings were absent and evidence was not adduced. That was one of the factor which was considered while justifying

4 2008 (8) SCC 92

5 1970 Mh. L.J. 116

6 1978 Mh. L.J. 17

7 AIR 2007 SC 1546

8 1975 AIR (Supreme Court) 105

9 2012 (1) WC532

the interference by the High Court. Learned Advocate relied upon the headnote 'D'. it says about when the authority become Functus officio. Whereas in case of Ramchandra and Another Vs. Collector, Nagpur and Others, the amount claimed was vague and there were no particulars. It was held that it was one of the requirement of Section 137 of the Maharashtra Co-operative Societies Act. Whereas in case of M/s. Magadh Sugar and Energy Vs. State of Bihar (supra), the Hon'ble Supreme Court reiterated the law on the point of entertainment of the writ petition even though alternate remedy is available.

9. I have gone through these judgments minutely. When the ratio laid down in these judgments are applied to the facts of this case, it reveals that there is no illegality committed by the Deputy Registrar when he passed the second order. It is undisputed fact that when the first order was passed by the learned Deputy Registrar, it was not on merits. It mean to say that the application was not dismissed after appreciating the contention of the both the

parties. It was plainly dismissed for not supporting and filing necessary documents those were the lacunae which was noticed by the learned Deputy Registrar. When the second order is perused it reveals that he come to conclusion to grant recovery certificate. Hence this Court feels that when the remedy of revision is certainly available to the Petitioner as contemplated under Section 154 of the Maharashtra Co-operative Societies Act, this is not a case wherein this Court should interfere in writ jurisdiction. Hence without making any observation about merits of the matter, writ petition stands dismissed. Interim application, if any, also stands disposed of.

10. At this stage, learned Advocate for the Petitioner submitted that stay granted to the recovery Certificate by this Court earlier to continue for eight weeks till the time the Petitioner will take appropriate steps. Interim relief granted earlier to continue for four weeks from today.

11. The Petitioner is at liberty to take the plea of

condonation of delay caused in filing those proceedings in view of the fact that he was prosecuting the present petitioner. He is at liberty to pray for condonation of delay and concerned authority to consider it positively.

12. The Petitioner is at liberty to request the concerned authority for adjustment of 50% of the arrears deposited by him with the Society as directed by this Court. The Society is at liberty to make necessary sub-missing. The authority to take appropriate decision accordingly.

[S. M. MODAK, J.]