

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4419 OF 2021

Ashok Bhojraj Bodhwani

...Petitioner

V/s.

Deputy Registrar, Co. Op. So.,

H/w Ward, Mumbai & Anr.

...Respondents

Mr.Yatin N. Shah for the Petitioner.

Mr.D.V. Nelson Rajan, AGP for the Respondent No.1 -State.

Mr.S.B. Pawar a/w Ms.Swati Sawant i/b S.K. Legal Associates for
Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 03 OCTOBER 2022

P.C.

. Rule made returnable forthwith. The learned AGP waives notice on behalf of Respondent No.1. Mr.Pawar, the learned counsel waives notice on behalf of Respondent No.2. Heard finally by consent of parties.

2. By this Petition, the Petitioner is challenging the order passed by Respondent No.1-Deputy Registrar of Co-operative Societies issuing a recovery certificate against the Petitioner for a sum of Rs.8,85,490/-. The Respondent Co-operative Housing Society had filed proceedings for recovery

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of the aforesaid amount towards unpaid maintenance charges against late Bhojraj Bodhwani who is father of the Petitioner.

5. Admittedly, Bhojraj Bodhwani has expired on 23 April 1989. The Petitioner appeared before the Deputy Registrar and intimated about factum of death of his father in the year 1989. A perusal of the impugned order shows that by an order dated 28 January 2021, the learned Deputy Registrar had allowed the Application filed by the Society impleading the present Petitioner as the Respondent after which the impugned order came to be passed.

6. The only contention raised on behalf of the Petitioner is that the Petitioner was not a party to the proceedings before the Deputy Registrar and these proceedings were instituted against a dead person. He states that no opportunity was granted to the Petitioner to contest these proceedings.

7. The learned counsel for Respondent-Society has raised a preliminary objection to the maintainability of the Petition on account of availability of a remedy under Section 154 of the Maharashtra Co-operative Societies Act, of a Revision Application before the State Government.

8. I have considered the submissions made.

9. The record discloses that the Petitioner was aware of the proceedings. The Petitioner had appeared before the learned Deputy Registrar and had intimated about the death of his father. A perusal of the impugned order passed by the learned Deputy Registrar shows that the Petitioner was subsequently impleaded, as a Respondent.

10. I find that in such circumstances, the Petitioner has remedy of challenging the impugned order in a Revision Application under Section 154 of the said Act.

11. At this stage, the learned counsel for the Petitioner, on instructions, states that the Petitioner shall approach the Revisional Authority, within a period of three weeks from today and the Petitioner may be protected on limitation.

12. In that view of the matter, the Petition is disposed of. It will be open to the Petitioner to take recourse to remedy under Section 154 of the said Act, within a period of three weeks from today, if so advised. If such Revision Application is filed, seeking condonation of delay, the Revisional Authority shall have due regard to the provisions of Sections 5 and 14 of the Limitation Act and the pendency of this Petition, from 6 April 2021 till today.

13. Rival contentions of the parties on merits are left open.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.