

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 8282 OF 2022**VAISHALI
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+0530**Mrs. Aruna S. Joshi and Anr.****...Petitioners****Vs.****Apana Ghar Unit -9****Cooperative Housing Society Ltd.,****And Ors.****...Respondents***** * * *****Mr. R.s. Apte i/b. Mandar imaye for Petitioners****Mr. Mukesh Vashi, Senior Counsel a/w. Bhavin Gada****a/w. Chirag Desai i/b. Solicis Lex for Respondent Nos.1,3
to 13,****Ms. Sneha Vani i/b. Jay Vakil for Respondent No.2****Coram : Sandeep K. Shinde, J.****Dated: 6th SEPTEMBER, 2022.****P.C. :**

1. The election programme to elect committee members of Respondent Society was published on 9th January, 2022 by Mr. Vinay Vagle, Returning Officer, appointed by the Respondent Society vide Resolution dated 5th December, 2021, in terms of Rule 76-B of the Maharashtra Cooperative Societies (Election to Committee) Rule, 2014 ('said Rule' for short). Rule 76-B contemplates, Returning Officer shall be appointed by the Managing Committee, either from Panel of Returning Officers

maintained by the State- Cooperative Election Authority or from among the members of the Society, who are not desirous to contest the election. Such an appointment is to be made before sixty days of the expiry of tenure of the Committee and communicate the appointment to the Registrar. Second proviso the Rule 76-B, provides for training, the Returning Officer shall undergo related to election of committee. In the case at hand, the election was held on 27th February, 2022 and 13 members were elected as committee members of the respondent society. The election was questioned by presenting Election Petition to the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act. In principal, the election was challenged on the ground that appointment of Returning Officer was invalid, being contrary to provisions of Rule 76-B. Pending election petition, Returning Officer filed an affidavit to state that he completed his training on 14th February, 2022 related to the elections and he was on panel of Returning Officer, maintained by the Divisional Joint Registrar. On this premise, the Cooperative Court, Mumbai passed a Judgment and Award under Order XII Rule 6 of the Civil Procedure Code and in consequence, the election of the Respondent Society held on 27th February, 2022

has been set aside. Feeling aggrieved by the said Judgment and Award, Respondent Society filed Appeal before the Cooperative Appellate Court at Mumbai. Pending appeal, vide order dated 19th May, 2022, the Member, State Cooperative Appellate Court stayed the operation of the Judgment and Award and directed to list the appeal for hearing on 7th June, 2022. Feeling aggrieved and dissatisfied with the said order, two out of five original disputants have preferred this petition.

2. Heard Mr. R.S. Apte, learned Senior Counsel for the Petitioners, Mr. Mukesh Vashi, Learned Senior Counsel for Respondent Nos.1, 3 to 13. Ms. Sneha Vani for Respondent No.2

3. Without addressing the issues raised in the Appeal on merits, prima facie in my view impugned order, granting stay to the operation of Judgment and Award, passed by the Cooperative Court, under Order XII Rule 6 of the Civil Procedure Code, cannot be faulted with. Reason being, in absence of order staying the Award, Society would have been rendered without management. In any case, question as to whether alleged irregularity in appointing the Respondent No.2 as Returning Officer under Rule 76-B of the Rules, vitiates the election process or not, is required to be addressed and answered in Appeal. In

that view of the matter, the Cooperative Appellate Court shall endeavor to decide the Appeal No. 57/2022 in Dispute No. 185/2022 in accordance with law, preferably within two months from communication of this order. All contentions of the parties to the Appeal are expressly kept open. Needless to state, Appellate Court shall decide the appeal on merits, without being influenced by order of this Court.

Writ Petition is disposed of.

(Sandeep K. Shinde, J.)