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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10150 OF 2022

Sadanand Kacheshwar Kadam

...Petitioner

Vs.

The State of Maharashtra

Thr. The Prin. Secretary, Ministry,

for Cooperation and Ors.

...Respondents

Mr. Jayendra D. Khairnar for Petitioner

Mr. Sachin H. Kankal, AGP for State/Respondent Nos.1 and
2

Mr. Rahul Motkani for Respondent No.4

Mr. Pratik Rahade i/b. P.N. Joshi for Respondent No. 5

Mr. Dilip Patil Bankar a/w. Pooja D. Patil for Respondent
No.3

CORAM : SANDEEP K. SHINDE, J.

FRIDAY, 30TH SEPTEMBER, 2022.

P.C. :

1. Mr. Ratnakar Vinayak Kadam, Member of Ojhar Multiple Cooperative Bank Ltd. (Society for short), presented a nomination paper to the Returning Officer under section 21(1) of The Maharashtra Cooperative

Societies (Election to Committee) Rule 2014 ('Rules' for short). Along with nomination paper, he filed a declaration that he was not disqualified under Section 73 CA of the Maharashtra Cooperative Societies Act. The nomination was objected to by the Petitioner on the ground that Mr. Ratnakar Kadam he was in arrears of the dues payable to the society. To that effect, Petitioner had produced a letter dated 13th July, 2022 issued by Nashik District Central Cooperative Bank. It appears, although the notice was served on Mr. Ratnakar Vinayak Kadam- Respondent No.5, he did not attend the office of the Returning Officer, and disputed the objections. In the result, the objection to the nomination was upheld. Resultantly, Respondent No.5 was disqualified for being chosen as a committee member of the society. Feeling aggrieved and dissatisfied with the order of the Returning Officer, Mr. Ratnakar Vinayak Kadam preferred an appeal under Section 152-A of the Maharashtra Cooperative Societies Act. In the appeal, he produced a 'No Dues Certificate' dated 14th July, 2022, issued by the Society.

2. Appellate Authority accepted the no dues certificate. Thus, appeal was allowed. Resultantly, order passed by the Returning Officer dated 14th July, 2022 was

set aside. In other words, Mr. Ratnakar Vinayak Kadam was held eligible to contest the election of the society. Feeling aggrieved by the order passed in the appeal, this petition is preferred.

3. Heard Jayendra Khairnar, learned counsel for the Petitioner and Mr. Pratik Rahade, learned counsel for Respondent No.5 – Ratnakar Vinayak Kadam.

4. Mr. Rahade, learned counsel for the Respondent in the course of arguments, has produced three receipts issued by the Society;

(i) Receipt dated 13th July, 2022, acknowledging that Respondent No. 5 deposited Rs.20,40,000/- in cash; and

(ii) Receipts acknowledging deposit of Rs.11,50,000/- in cash on 14th July, 2022.

Mr. Rahade, therefore, contended that since Rs.20,40,000/- were paid to the Society on 13th July, 2022 itself, the Respondent No.5 has not incurred disqualification. Mr. Rahade submitted that the Returning Officer invalidated the nomination on 14th July, 2022, however, the dues were cleared and paid to the society on 13th July, 2022. Therefore, the order passed in appeal validating the nomination of the Respondent No.5 calls for no interference.

5. Mr. Khairnar countered the arguments of the Respondent No.5.

6. It is not in dispute that nomination form along with a declaration was presented to the Returning Officer on 8th July, 2022. A declaration in terms of proviso to Sub-Rule (3) of Rule 21 dated 8th July, 2022, inter alia, declares that Ratnakar Vinayak Kadam has not incurred disqualification under Section 73CA of the Cooperative Societies Act. Be that as it may, a declaration by Respondent No. 5 on the face of it was contrary to letter dated 13th July, 2022 issued by the Nashik District Central Cooperative Bank. This letter states that the Respondent No.5 had borrowed Rs.17,60,000/- in May, 2016 and as on 31st May, 2017, principal amount plus interest accrued thereon, was due and payable by him. A letter also records a fact that to recover the arrears due and payable by Respondent No.5, bank account of the Respondent No.5 was frozen. Further it appears that at the request of the Respondent No.5, on 11th July, 2022, Nashik District Central Cooperative Bank de-frozeed the account. Having regard to these facts, it is crystal clear that as on the date of presenting nomination paper, the Respondent No. 5 was in arrears of the dues payable to the bank, as such had incurred disqualifications within

the meaning of Section 73CA of the Maharashtra Cooperative Societies Act. For that reason, simply because, allegedly deposited Rs.20,40,000/0 on 13th July, 2022, that itself will not absolve in of disqualification he has incurred. Therefore, the impugned order validating nomination paper of Respondent No. 5 calls for interference. In the result, the impugned order is quashed and set aside. Resultantly, order passed by the Returning Officer invalidating nomination paper of Respondent No.5, is upheld.

7. The Writ Petition is partly allowed and disposed of.

(SANDEEP K. SHINDE, J.)