

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(106)

LPA-700-2022 (O&M)
Date of Decision:-23.08.2022.

The Old Friends Cooperative House Building Society Ltd.

.....Appellant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Harjot Singh Bedi, Advocate for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral)

CM-1641-LPA-2022

Prayer in this application is for condoning the delay of 10 days in filing the instant appeal which is stated to be neither intentional nor deliberate nor any undue benefit would be conferred on applicant-appellant by delaying the filing of the present appeal.

Prayer made in this application is supported by the affidavit of the Secretary of the appellant-Society.

In the light of the above, the present application is allowed and delay of 10 days in filing the appeal stands condoned.

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Challenge in this appeal is to the judgment passed by the learned Single Judge dated 08.07.2022 whereby, the writ petition preferred by respondent No.5 Kashmir Singh S/o Harbans Singh challenging the

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order dated 23.05.2019 (Annexure P-7) passed by the Deputy Registrar, Cooperative Societies, Jalandhar-respondent No.4 whereby, the said respondent No.4 was removed as Member of the Committee of the appellant-Society and the order dated 09.10.2020 (Annexure P-10) passed by the Joint Registrar, Cooperative Societies, Jalandhar-respondent No.3 whereby, the appeal of the said respondent No.4 was dismissed, has been allowed and the case remanded back to respondent No.3 for fresh decision, in accordance with law.

Primary and the sole challenge in the present appeal is that the amendment, on the basis of which the writ petition has been allowed i.e. proviso to Section 27 (1) (b) of the Punjab Cooperative Societies Act, 1961 (hereinafter called as 'the 1961 Act') is illegal and could not have held the field in the light of the fact that the same was brought about by way of amendment in pursuance to a Constitutional Amendment as introduced i.e. 97th Constitutional Amendment inserting part IX-B in the Constitution which consisted of Articles 243-Z (h) to Article 243-Z (d) being relating to the Cooperative Societies in the country, which has been held to be *ultra vires* the Constitution of India by the Gujarat High Court. The said judgment has been upheld by the Hon'ble Supreme Court in **Union of India Vs. Rajender N Shah and another, 2021 AIR (SC) 4925.**

Counsel for the appellant contends that once the 97th Amendment qua part IX-B of the Constitution itself has been held to be *ultra vires* because of non-ratification of the said Amendment by the requisite number of States i.e. 50% as per proviso to Article 368 (2) of the Constitution, the basis for bringing about the amendment in the 1961 Act

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i.e. introduction of the proviso to Section 27 (1) (b) cannot sustain. His submission is based upon the assertion that the language of the so amended Constitutional provision and as incorporated in the 1961 Act are identical and, thus, could not have been relied upon by the learned Single Judge to grant the relief to respondent No.4.

This contention of the learned counsel for the appellant cannot be accepted in the light of the fact that although the 97th Constitutional Amendment to part IX-B of the Constitution has been struck down as unconstitutional, that does not make the amendment as made by the States in the Statute illegal specially in the light of the fact that it is an admitted position that the Cooperative Societies is a State subject and the State is, therefore, competent to amend the Statutory provision as contained in the 1961 Act. Had the State not intended to continue with the said provision, it could have immediately withdrawn the said amendment. Merely because the Constitutional provision has been struck down would not bring that subject out of the purview of the State Legislature, which admittedly is competent to legislate on the said subject.

That apart, no challenge has been laid to the amendment as has been carried out to the provisions of the Cooperative Societies Act, 1961 by the appellant. Without there being any challenge to a Statutory provision which holds the field as of today, the relief as has been sought and prayed in the present appeal cannot be granted.

In the light of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, this application for stay of the judgment has been rendered infructuous and is disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ALOK JAIN)
JUDGE**

August 23, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No