

Arjun

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

WRIT PETITION NO.15584 OF 2023

Chhaya Prakash Khorate & Ors.

...Petitioners

V/s.

The Assistant Registrar, Co-operative
Societies (Milk) & Anr.

...Respondents

Mr. Chetan Patil a/w Mandar G. Bagkar, for the Petitioners.

Mr. Deelip Patil Bankar, Chief Standing Counsel (SCEA), for
Respondent No.1.

Mr. Ruturaj Pawar, for Respondent No.2.

CORAM : MADHAV J. JAMDAR, J.

DATED : DECEMBER 15, 2023

P.C.:

1. Heard Mr. Chetan Patil, learned Counsel appearing for the Petitioners, Mr. Deelip Patil Bankar, learned Chief Standing Counsel appearing for Respondent No.1 and Mr. Ruturaj Pawar, learned Counsel appearing for Respondent No.2.

1. The challenge in the present Writ Petition is to the legality and validity of the Order dated 4th December 2023 passed by the Taluka Co-operative Election Officer @ Assistant Registrar Co-operative Societies (Milk), Kolhapur (“**impugned Order**”) on the objection raised by the Petitioners. By the impugned Order, the said objection has been rejected.

2. Mr. Chetan Patil, learned Counsel appearing for the Petitioners has very strongly relied on the Order dated 6th December 2023 passed by the learned Judge, Co-operative Court 1, Kolhapur below Exh.5 in Dispute No.221 of 2023. The said Dispute has been filed by one member against the Opponent Nos.2 to 42 to restrain them from exercising their membership rights. By the said Order dated 6th December 2023, the learned Judge, Co-operative Court 1, Kolhapur rejected the said Exh.5 Application. Mr. Patil, learned Counsel relied on certain observations in the said Order dated 6th December 2023 and more particularly, on paragraph No.9 (page 55 of the Writ Petition) to the effect that various factors show that the Opponents have paid the amount of the share capital and entrance fee to the society and it is further observed that in Part B Clause 4 of the auditor's report for the year 2022-2023, he has remarked that the additional 47 members' Applications are not recorded in the proceeding book.

3. Mr. Pawar, learned Counsel appearing for Respondent No.2 has relied on the "I" Register and according to him the said Register reflects only 101 members and not 147 members as claimed by the Petitioner.

4. Mr. Deelip Patil Bankar, learned Chief Standing Counsel pointed out Section 38 of the *Maharashtra Co-operative Societies*

Act, 1960 (“**said Act**”) and, more particularly, Sub-Section 2 of Section 38, which provides that the Register shall be *prima facie* evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member. The Taluka Co-operative Election Officer has got very limited jurisdiction under Rule 11 of the *Maharashtra Co-operative Societies (Election to Committee) Rules, 2014* (“**said Rules**”). Therefore, the objection raised by the Petitioners cannot be entertained under the said Rules. In any case, there are disputed questions of facts which can not be examined under the writ jurisdiction.

5. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

6. However, it is clarified that these observations are made only for the purpose of examining the legality and validity of the of the Order passed by the Taluka Co-operative Election Officer, and if Election Dispute is filed under Section 91 of the said Act, then the same be decided on its own merits and all the contentions in that behalf are expressly kept open.

[MADHAV J. JAMDAR, J.]