

AGK

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

**WRIT PETITION NO.734 OF 2017
WITH
INTERIM APPLICATION NO.3851 OF 2023**

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Yervada Gadi Wadari Mazdoor
Coop. Society Limited

... Petitioner

V/s.

Nikhil Builders, through its sole
proprietor Namdeo Govind Paste & Ors.

... Respondents

Mr. T.D. Deshmukh with Mr. Anshuman Deshmukh for
the petitioner.

Mr. Rajiv Patil, Senior Advocate with Mr. Saurabh Raut
for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2023

P.C.:

1. Challenge in this writ petition under Article 227 of the Constitution of India is to the order of refusal to recall order of no written statement.

2. The Trial Court rejected the application mainly on the ground that the Administrator who filed application on behalf of the society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 had no authority to file such application as the authority of such Administrator comes to an end after lapse of six months.

3. The present writ petition is also filed by the society through Administrator. In the absence of order statutorily conferring power on the Administrator to represent the society, mere letter issued by the Registrar under the provisions of the Maharashtra Cooperative Societies Act, 1960 would not cloth such Administrator to exercise power over the management of the society unless such power is exercise in furtherance of powers conferred under the Maharashtra Cooperative Societies Act, 1960. Save and except powers conferred under Sections 77-A, 78 and 78-A of the Maharashtra Cooperative Societies Act, 1960, there is no power available with the Registrar to appoint Administrator. Only other power available with the Registrar is under Section 79 which can be exercised if the contingencies under Section 79 such as not keeping books of accounts or other such administrative things are not performed by the Managing Committee members of the society. Therefore, in my opinion, filing of such application by the Administrator whose authority has come to an end was not maintainable.

4. Learned advocate for the petitioner submitted that though “no written statement” order being passed by the Trial Court, suit could not have been fixed for *ex parte* hearing as the suit is governed by the provisions of the Code of Civil Procedure, 1908 as the suit prior to amendment of 1 July 2002.

5. Though the submission of the petitioner in law deserves consideration; however, such objection can be allowed to be raised by the society through a person authorized to represent the society in law.

6. In the absence of such authorization, neither the application for filing of written statement nor present writ petition can be entertained.

7. The writ petition, therefore, stands dismissed. No costs.

8. In view of disposal of the writ petition, nothing survives in the interim application and the same stands disposed of as infructuous.

(AMIT BORKAR, J.)