



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9174 OF 2023

Usha M. Talreja
Versus
District Deputy Registrar Co-operative
Societies, DDR III, Mumbai & Ors.

...Petitioner
...Respondents

Mr. Ashok Verma i/b. Mr. Anil Jakatdar, for the Petitioner.

Mr. A. P. Vanarase, AGP, for the State/Respondent Nos.1 and 2.

Ms. Isha Rakesh Singh i/b. Mr. Prakash Rohira, for Respondent No.3.

CORAM : MADHAV J. JAMDAR, J.
DATED : 13th SEPTEMBER 2023

P.C. :

1. Heard Mr. Ashok Varma, learned counsel appearing for the Petitioner, Mr. Vanarase, learned AGP, appearing for Respondent Nos.1 and 2 and Ms. Isha Singh, learned counsel appearing for Respondent No.3.

2. By way of the present Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioner who is the member of Respondent No.3-society is inter alia challenging the legality and validity of order dated 8th June 2023 passed by the learned District Deputy Registrar, Co-operative Societies

(III), Mumbai in Revision Application No.104 of 2022. The said Revision Application has been dismissed by the learned District Deputy Registrar, Co-operative Societies(III), Mumbai on the ground that the Petitioner has not complied with condition of 50% deposit to be made to the concerned society as contemplated under Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as **“the said Act”**). It has been mentioned in the impugned order that, although the Petitioner has paid Rs.2,75,000/- yet, the same is not 50% amount as contemplated under Section 154(2-A) of the said Act. The 50% amount comes to Rs.2,87,488/-. Thus, learned District Deputy Registrar, Co-operative Societies(III), Mumbai observed that there is a shortfall of Rs.12,488/- and therefore, dismissed the said Revision Application.

3. It is the contention of learned counsel appearing for the Petitioner that although, the cheques were forwarded to the society, the society has not encashed the same.

4. Ms. Isha Singh, learned counsel appearing for the Respondent No.3 submitted that there is shortfall of payment and therefore, supported the impugned order. According to her

50% of the amount due is required to be calculated on the amount due till date.

5. The learned District Deputy Registrar, Co-operative Societies (III), Mumbai has dismissed the said Revision Application for non-compliance of Section 154(2-A) of the said Act. The said Section 154(2-A) reads as follows:-

“154(2-A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues.”

6. Section 154(2-A) provides that no application for Revision shall be entertained against the recovery certificate issued by the Registrar under section 101 of the said Act unless the applicant deposits with the concerned society, 50%. amount of the total amount of recoverable dues.

7. Thus, the contention raised by the learned counsel appearing for the Petitioner that their cheques are not encashed by the society is outside the purview of the requirement as contemplated under Section 154(2-A) of the said Act. Therefore, the said contention is not relevant.

8. As far as the contention raised by the learned counsel

appearing for the Respondent No.3 that the 50% amount of the total amount of recoverable dues is to be calculated till date, it is to be seen that even according to the learned District Deputy Registrar, the Petitioner has made substantial compliance and shortfall for 50% is only Rs.12,488/-. Therefore, it is not necessary to go into the said aspect.

9. At this stage, learned counsel appearing for the Petitioner states that, without prejudice to her rights and contentions, the Petitioner is ready to deposit an amount of Rs.12,488/- within a period of one month with the society.

10. In view of the above, following order is passed:-

ORDER

(a) The impugned order dated 8th June 2023 passed by the learned District Deputy Registrar, Co-operative Societies (III), Mumbai in Revision Application No.104 of 2022 is quashed and set aside, on the condition that the Petitioner deposits with the Respondent No.3-society an amount of Rs.12,500/- within a period of four weeks from today.

(b) If such deposit is made within the stipulated period, the said Revision Application No.104 of 2022 is restored to file of the learned District Deputy Registrar, Co-operative Societies, III, Mumbai. Thereafter, learned District Deputy Registrar, Co-operative Societies, III, Mumbai to decide the said Revision Application in accordance with law.

(c) All the contentions of both the parties on merits are expressly kept open.

(d) It is also clarified that subject to above deposit, the Recovery Certificate dated 7th January 2020 issued by learned Deputy Registrar, Co-operative Societies, H-West Division, Mumbai in Application No.14 of 2019 shall remain stayed till the disposal of the Revision Application.

11. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]