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

WRIT PETITION NO.10570 OF 2023

Surji Damji Chhedda & Ors. ...Petitioners

Versus

State of Maharashtra ...Respondents
through Minister of Co.Op. & Ors.

WITH

WRIT PETITION NO.10609 OF 2023

Vivina CHS Limited ...Petitioners

Versus

State of Maharashtra ...Respondents
through Minister of Co.Op. & Ors.

Mr. Vijay Patil i/by Mr. Kalpesh Uttam Patil for the Petitioners.
Mr. C.D. Mali, AGP for State.
Mr. M.A. Khan a/w H.I. Sirguroh for Respondent No. 5.

CORAM : MADHAV J. JAMDAR, J.

DATED : 30th AUGUST 2023

P.C. :

1. The challenge in the Writ Petition No 10570 of 2023 is to the order dated 11th August 2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Appeal Nos. 291 of 2023. By the said impugned order although said Appeal was admitted, the stay application

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was rejected. The said Appeal was filed challenging the legality and validity of the orders dated 21st July 2023, passed by Deputy Registrar, Co-operative Societies, 'K-West' Ward, Mumbai under Section 78(A) 1(b) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the "**Said Act**") by which the Petitioners were removed from the managing committee of the Society and were disqualified for further term of managing committee.

2. The challenge in the Writ Petition No. 10609 of 2023 is to the order dated 11th August 2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Appeal No. 292 of 2023. By the said impugned order although said Appeal was admitted, the stay application was rejected. The said Appeal was filed challenging the legality and validity of order dated 21st July 2023, passed by Deputy Registrar, Co-operative Societies, 'K-West' Ward, Mumbai, by which the authorised officer has been appointed under Section 77(A) of the said Act to manage the affairs of the Society.

3. The impugned order dated 11th August 2023, in both the writ petitions is common order passed in both the Appeal Nos. 291 of 2023 and 292 of 2023 by which the Appeals have been

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admitted, however the stay application was rejected. The reasons given by the Divisional Joint Registrar while rejecting the stay applications are that the outstanding amount with respect to Mr. Ippan Varghese, former Chairman of the Society was Rs.8,10,000/- and the said outstanding amount has been waived by the managing committee and the said decision is against the interest of the Society. It is further observed that as the Petitioners have been removed from the managing committee of the society, there is no quorum.

4. Mr. Patil, learned Counsel appearing for the Petitioners states that the said decision to waive Rs.8,10,000/- has been taken by the general body of the Society and not by the managing committee. He further states that the earlier managing committee has charged said Mr. Varghese an amount at the rate of Rs.18,000/- per quarter instead of Rs.1500/- per quarter. It is the contention of Mr. Khan that the said Resolution has not been passed by the general body. For substantiating the said contention, he states that the minutes of AGM are only signed by the Honourary Secretary. However, Exhibit 'J' to the petition shows that the same are Minutes of AGM held on 10th August 2022. The minutes are signed by the Honourary Secretary. There is nothing to show that the said

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minutes are not the minutes of Annual General Meeting held on 10th December 2023. The said waiver of Rs.8,10,000/- by the Petitioners in their capacity as the office bearers of the society is the main reason given by the Joint Registrar for rejecting stay to the order of removal of the Petitioners as office bearers and for appointing authorised officers, however, the said decision is of general body of the Society.

5. The Appeal filed under Section 152 of the said Act, is a statutory appeal. If the interim order is not passed, then that will in-effect deprive the Petitioner the right of statutory appeal. The impugned order is passed on the assumption that the said waiver is granted by the Petitioners as office bearers of the Society, however, the same is granted by the general body of the society. Accordingly, order dated 11th August 2023 passed by the learned Divisional Joint Registrar in Appeal Nos. 291 of 2023 and 292 of 2023 are quashed and set aside to the extent of rejecting the stay application to the orders dated 21st July 2023 passed by the Deputy Registrar, Co-operative Societies, 'K-West' Ward, Mumbai and the said order shall remain stayed till the disposal of said Appeals.

6. Learned Divisional Joint Registrar, Mumbai is requested to decide said Appeal Nos. 291 of 2023 and 292 of 2023

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expeditiously and in any case within a period of six months from today.

7. Accordingly, Writ Petitions are disposed of in above terms with no order as to costs.

8. However, it is expressly made clear that the observations made in this order are only for the purpose of examining the legality and validity of the impugned order passed by the Divisional Joint Registrar rejecting stay application. It is made clear that all the contentions of both the parties are expressly kept open and the Divisional Joint Registrar to decide the appeals uninfluenced by the observations made in impugned order as well as this order.

(MADHAV J. JAMDAR, J.)