

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

WRIT PETITION NO.11373 OF 2018

Middle Income Group-III CHS Ltd. ... Petitioner
Versus
The Deputy Registrar C. S. & Ors. ... Respondents.

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Mr. P. S. Dani, Sr. Advocate a/w. Mr. Sandip Shinde i/b. Ergo Juris for
Petitioner.

Mr. C. D. Mali, AGP for State.

Mr. Akshay Kapadia, for Respondent Nos. 3 & 4.

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CORAM : SANDEEP V. MARNE, J.
DATE : 04 NOVEMBER 2023.

P. C.:

Challenge in the present petition is to the Order dated 02 May 2018 passed by the Deputy Registrar, Cooperative Societies appointing auditor for conducting audit of the accounts of the society under section 81(6) of the Maharashtra Co-operative Societies Act 1860 (**the Act of 1960**). Petitioners have also challenged Order passed by the Deputy Registrar rejecting their Revision Application on 26 September 2018.

2. I have heard Mr. Dani, the learned senior advocate appearing for Petitioner-Society and Mr. Kapadia, the learned counsel appearing for Respondent Nos.3 and 4 and learned AGP appearing for state.

3. The short issue involved in the present petition is manner in which the Deputy Registrar has proceeded to appoint an auditor for conducting re-audit into accounts of the society. It appears that some of the members of the society had filed complaint and requested for re-audit of the accounts of the society for the year 2015-16 and 2016-17. Before issuance of any Show Cause Notice to the society calling it upon for its explanation as to why re-audit shall not be done, the Deputy Registrar requested the District Special Auditor Class-1 Co-operative Societies, Mumbai to suggest name of the auditor. Accordingly District Special Auditor Class-1, Co-operative Societies, Mumbai suggested name of Mr. A. M. Shambharkar, Auditor by it's letter dated 21 March 2018. That the decision was already taken by the Deputy Registrar without issuing Show Cause Notice to the society on 27 March 2018. Society responded to the Show Cause Notice on 23 April 2018. The Deputy Registrar thereafter proceeded to pass Order dated 02 May 2018 appointing Mr. A. M. Shambharkar as the auditor for conducting re-audit into the accounts of the society for the year 2015-16 and 2016-17 under section 81 (6) of the **Act of 1960**. Curiously in the Order the date of Order it is reflected that the Order has been passed on 27 April 2018 though at the top of the Order the date 02/05/2018 is reflected. Mr. Dani would submit that almost all the dates during 23 April 2018 to 01 May 2018 were holidays. Accordingly since the decision to conduct re-audit and appoint auditor was already taken by the Deputy Registrar, voluminous reply submitted by the Petitioner was not taken into consideration and there was no

attempt on the part of the Deputy Registrar to take into consideration any reply and apply his mind with to various contentions raised therein. Though this aspect was highlighted before the Divisional Joint Registrar in the Revision Application, he has proceeded to ignore the said objection.

4. In my view therefore the Order dated 02 May 2018 passed by the Deputy Registrar suffers from patent error where the decision to conduct re-audit and to appoint auditor was already taken on 21 March 2018 and the society was subsequently issued Show Cause Notice by way of formality on 27 March 2018. In that view of the matter it would be appropriate to set aside the Order passed by the Deputy Registrar dated 02 May 2018 and to remand proceedings before it for deciding afresh. For that purpose Order passed by the Divisional Joint Registrar also needs to be set aside.

5. Accordingly Writ Petition is disposed of setting aside the Order dated 02 May 2018 passed by the Deputy Registrar as well as Order dated 26 September 2018 passed by the Divisional Joint Registrar. The complaint filed by the members of the society for conducting re-audit under the provisions of section 81(6) of the Act of 1960 are restored before the Deputy Registrar, who shall proceed to decide the same after taking into consideration the reply dated 23 April 2018 filed by the society and after granting an opportunity to hearing to the society. With the above directions writ petition is disposed of. All contentions raised by the parties on merits are left open. Considering that the re-audit

is demanded in respect of the years 2015-16 and 2016-17, the Deputy Registrar shall proceed to decide proceedings as expeditiously as possible, preferably within a period of four months from today. Parties shall appear before the Deputy Registrar on 28 November 2023 and shall obtain further directions.

SANDEEP V. MARNE, J.

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