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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 57 OF 2024
IN
WRIT PETITION NO. 3501 OF 2021

Kisan Shankar Bhoil, Akash Matsya ... Petitioner
Vyavasayik Sahkari Sanstha Maryadit

vs.

Samadhan Uttreshwar Mane (Chairman
Bhima Chandrabhaga Matsya Vyavsayik Sah.
Sanstha Maryadit) and Ors ... Respondents

Mr. Sarang S. Aradhye a/w. Ms. Gauri Velankar, Mr. Saarth Chordia
and Mr. Shantanu Gurav for Petitioner.

Mr. Mateen Shaikh a/w. Ms. Muskan Shaikh, Jammu Shaikh, Arshad
Shaikh, Mr. Kshirsagar Srinivas for Respondent.

Mr. P.G. Sawant, AGP for Respondent Nos. 2 to 4.

CORAM : GAURI GODSE, J.

DATED : 27th NOVEMBER 2024

ORDER:

1. By the order under review, this court permitted the review petitioner to withdraw his appeal filed under Section 152 of the Maharashtra Cooperative Societies Act 1961, with liberty to file appropriate proceedings as permissible in law to challenge the order that was impugned in his appeal.

2. Learned counsel for the review petitioner submits that the review petitioner has erroneously withdrawn Appeal No. 11 of 2020

as permitted in the order under review. He submits that the Appeal No. 11 of 2020 was maintainable. Hence, there was no question of the review petitioner withdrawing the appeal. He submits that the liberty is granted to the review petitioner to challenge the order dated 20th January 2016 by filing a dispute before the Cooperative Court. He submits that the dispute to challenge the order dated 28th January 2016 would not be maintainable, in view of the proviso to clause (e) of Sub-Section (1) of Section 91 of the Maharashtra Cooperative Societies Act.

3. Learned counsel for the review petitioner, therefore, submits that the decision relied upon by the earlier advocate who appeared for the review petitioner in the writ petition erroneously withdrew the appeal. Learned counsel for the review petitioner points out paragraph no.13 of the decision of this Court in the case of ***Wadala Shriram Industrial Premises Co-operative Society Limited, Mumbai Vs. Kotecha and Company and Others***¹. He submits that in view of the observations in paragraph no. 13, Appeal No. 11 of 2020 was maintainable and thus could not have been withdrawn. He, thus, submits that the order dated 1st March 2024 be recalled and the petition be heard on merits.

4. Learned counsel for the respondent submits that considering

1 2001 SCC Online Bom 414

the scope of Section 152 as explained in the said decision, the review petitioner, by relying upon the legal principles settled in the said decision, has taken a conscious decision to withdraw the appeal with liberty as recorded in the order. He submits that the grounds argued on behalf of the review petitioner cannot be now entertained for arguing the writ petition on merits.

5. I have considered the submissions made by the parties. In view of the scope of an appeal under Section 152, as explained in the decision of *Wadala Shriram Industrial Premises Co-operative Society Limited*, the submissions were made on behalf of the review petitioner for seeking withdrawal of Appeal No. 11 of 2020 with the liberty to file a dispute. The submissions made on behalf of the review petitioner at the time of arguing the writ petition were made by a different advocate. The review petition is filed through a new advocate who intends to reargue the writ petition by relying upon the same decision. The scope of Section 152 is explained in the said decision of *Wadala Shriram Industrial Premises Co-operative Society Limited*. The issues regarding the maintainability of the appeal or a dispute were not the subject matter of the writ petition. The order passed in an appeal filed by the review petitioner was the subject matter of the writ petition. By the order under review, this court has not expressed any opinion on the maintainability of the

appeal or a dispute.

6. I had heard the parties at length on the merits of the rival contentions. After arguing the writ petition on merits at length, in view of the legal principles settled by this court in the said decision on the scope of an appeal, the Review Petitioner took a conscious decision to withdraw his appeal with the liberty to file a dispute. By the order under review, this court granted liberty to the Review Petitioner to file appropriate proceedings as permissible in law to challenge the order that was impugned in his appeal. All the contentions of the parties on merits are kept open.

7. Thus, through a different advocate, the review petitioner decided to withdraw his appeal with liberty, to avoid any adverse order in the writ petition. Now, through a different advocate, the review petitioner makes an attempt to reargue the writ petition on merits.

8. The arguments raised on behalf of the review petitioner do not satisfy the parameters for exercising powers under Rule 1 of Order XLVII of the CPC. I do not find that the grounds argued on behalf of the review petitioner raise any valid ground to recall the order dated 1st March 2024. Hence, the review petition is dismissed.

(GAURI GODSE, J.)