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

WRIT PETITION NO.353 OF 2024

Balasaheb Akram Yevale ... Petitioner
V/s.
Gopal Mavale, Returning Officer,
Padmabhushan Krantivir
Dr. Nagnathann & Ors ... Respondents

Mr. Ketan Joshi a/w Mr. Vishwajeet Mohite, for
Petitioner.

Mrs. M. S. Srivastava, AGP for State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 10, 2024

P.C.:

1. The petitioner is the person who filed his nomination to the managing committee of cooperative society registered under the provisions of Maharashtra Cooperative Societies Act, 1960.
2. The petitioner's nomination was objected on the ground that the petitioner's proposer was defaulter within the meaning of Section 73-CA of the Maharashtra Cooperative Societies Act, 1960 and he did not comply with the Bylaw Nos. 28(c) and 28 (6).
3. The Returning Officer accepted the objection and rejected the petitioner's nomination.

4. Aggrieved thereby, the petitioner filed an appeal under Section 152-A of the Maharashtra Cooperative Societies Act, 1960. The Appellate Authority by the impugned order dated 29 December 2023 dismissed the appeal.

5. The petitioner, therefore, challenged the order passed by the Appellate Authority by way of present writ petition.

6. Learned Advocate for the petitioner submitted that the proposer cured disqualification before the date of scrutiny of depositing entire amount with the concerned cooperative society, the receipt evidencing such a payment was produced before the Returning Officer. However, the Returning Officer rejected the nomination and, therefore, interference under Article 227 of the Constitution of India is called for.

7. The order passed by the Returning Officer rejecting nomination has subject to appeal under Section 152A of the Maharashtra Cooperative Societies Act, 1960. The Single Judge of this Court in the case of **Vijaysingh Krishnarao Parbat vs Returning Officer, Janata**, reported in 2003 (2) Mh.L.J. 485 has held that in an appeal challenging rejection of nomination all contesting candidates are required to be made party. This Court followed the judgment of Division Bench of this Court. Even after the judgment in the case of **Vijaysingh** (Supra) the said view is consistently followed in several Single Bench judgments of this Court.

8. On perusal of the appeal memo, it appears that save and except the society and the complainant, no other candidate was made party to the appeal. Hence, the appeal is not maintainable. If

the appeal is not maintainable, the petitioner cannot challenge the validity of order rejecting nomination paper in this Court. Even in this writ petition, the contesting parties are not made parties.

9. Even otherwise, the election/voting of the society is scheduled to take place on 14 January 2024. The Apex Court in the case of **Shri Sant Sadguru Janardan Swami Vs. State of Maharashtra & Ors**, reported in (2001) 8 SCC 509 has held that the consistent view taken by the Bombay High Court is that even in case of election of cooperative society, after starting of election process, the High Court under Articles 226 and 227 of the Constitution of India shall be loath to interfere. The interference, at this stage when the list of validly nominated candidates is published, is not called for. Therefore, proper remedy for the petitioner is to challenge the rejection of nomination by way of filing the election petition under Section 91 of the Maharashtra Cooperative Societies Act, 1960.

10. By keeping remedy of petitioner to be agitated, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)