

VRJ

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

WRIT PETITION NO.3514 OF 2024

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Vikrant Chandrakant Patil

... Petitioner

V/s.

Vithhal Sahakari Sakhar Karakhana

Venunagar Limited & Ors.

... Respondents

Mr. Shrikant Kulkarni for the petitioner.

Mr. J. P. Patil, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2024

P.C.:

1. The petitioner filed an election dispute under section 91 of the Maharashtra Cooperative Societies Act, 1960. In the said dispute, the petitioner filed an application for amendment of cause title to implead one of the elected persons as opponent in the dispute. The Cooperative Court and the Appellate Court rejected the application for amendment on the ground of limitation. The order of the Cooperative Appellate Court is, therefore, challenged by way of present writ petition.

2. Learned advocate for the petitioner states that in view of power conferred under section 153 of the Code of Civil Procedure, 1908 and section 17 of the Limitation Act, 1963, the Cooperative Court could have allowed such application for amendment even

after expiry of period of limitation in relation to election dispute.

3. It is well settled that the right to contest an election, right to challenge the election are statutory rights created by statute and regulated by it. The manner of exercise of such rights is also provided in a statute. Right to file election petition is a right created under a statute subject to limitation provided in a statute. As per section 91 of the Maharashtra Cooperative Societies Act, 1960, the limitation for filing an election dispute is two months.

4. The election results are undisputedly declared on 7 June 2022. The petitioner filed dispute on 3 September 2022, however, he filed application for amendment to implead elected candidate on 7 February 2023. Therefore, it is evident that on the date of filing of application for amendment, the application was barred by limitation.

5. At this stage, it is necessary to draw analogy from section 21 of the Limitation Act, 1963. Section 21 of the said Act reads as under:

“21. Effect of substituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a

party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

6. On careful reading of section 21 of the Limitation Act, 1963, it is evident that the proceedings are deemed to be instituted against a person on the date when he was made party to the proceeding.

7. Since the period for impleading the contesting respondent was over on the date of filing of application, I find no error in the impugned order. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)