

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.1889 OF 2024

Pushpa Mavinkurve

..Petitioner

Versus

District Deputy Registrar of Co-Op.
Society & Ors.

..Respondents

Mr. Rahul Gaikwad a/w. Ms. Nikita Abhyankar i/b. Gravitas legal for the
Petitioner.

Mr. M. M. Pable, AGP for Respondent Nos.1 and 2 (State).

Mr. R. S. Tripathi i/b. Anita Sonurlekar for Respondent No.4.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 13th FEBRUARY 2024

PC.:

1. Heard.
2. The challenge raised in this writ petition is to the communication dated 21st March 2023 that has been issued by the District Deputy Registrar, Co-operative Society Mumbai requiring the Petitioner to comply with the provisions of Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960. The Petitioner, who is aggrieved by the Recovery Certificate dated 6th February 2023 has challenged the same by filing a revision application under Section

154(2-A) of the said Act and hence 50% of the amount mentioned in the Recovery Certificate is required to be pre-deposited.

3. It is submitted by the learned counsel for the Petitioner that the Petitioner is a tenant in the flat located at the Respondent No.4-Housing Society and which belongs to her landlord-Respondent No.5. The Petitioner is paying monthly rent of Rs.583/- to the Respondent No.5 and hence, the present proceedings could not have been initiated against her. In the proceedings under Section 101 of the said Act, the Petitioner had raised a plea of limitation by urging that the proceedings for recovery beyond a period of 3 years could not have been initiated in the matter. Without considering this aspect, the Recovery Certificate has been issued. It is, therefore, submitted that the requirement of pre-deposit be waived and the proceedings be directed to be decided on merits. In addition, the Petitioner seeks to challenge the validity of Section 154(2-A) of the said Act.

4. The learned counsel for the Respondent No.4-Co-operative Housing Society submitted that after the proceedings were remanded by this Court in Writ Petition No.1813 of 2019, notice was served on the Respondent No.5 at his Kolkata address. Despite service, the said Respondent No.5 did not contest the said proceedings. The Deputy

Registrar having decided the proceedings under Section 101 of the said Act on merits, all challenges at the behest of the Petitioner could be raised in the revision application. It was submitted that the validity of the provisions of Section 154(2-A) has been considered and upheld by this Court in **Kausalya Sampat Vs. Vasant Sahakari Bank Ltd. & Ors.**¹. The aforesaid judgment has thereafter been upheld by the Hon'ble Supreme Court. It is thus submitted that subject to complying with provisions of Section 154(2-A) of the said Act, the Petitioner can seek legal redress.

5. Having heard the learned counsel for the parties and having perused the documents on record, it may be noted that the validity of Section 154(2-A) of the said Act stands upheld by the judgment in the case of **Kausalya Sampat (supra)**. Insofar as the requirement of pre-deposit under Section 154(2-A) of the said Act is concerned, it may be noted that firstly, there is no power conferred to waive the said requirement. Secondly, on a revision applicant being successful in the said proceedings, the Revisional Authority is required to pass an order, directing refund of the amount so deposited while complying with the requirement of pre-deposit. Hence, there is sufficient safeguard in the Section itself while providing remedy of revision.

1 2004 (6) Bom. C.R. 651

6. We find that the Petitioner had participated in the proceedings under Section 101 of the said Act and hence it is permissible for her to raise all challenges in the revision proceedings under Section 154(2-A) of the said Act. We do not find any exceptional case made out by the Petitioner to invoke writ jurisdiction and set aside the communication dated 21st March 2023 requiring the Petitioner to comply with the provisions of Section 154(2-A) of the said Act.

7. For the aforesaid reasons, the writ petition stands dismissed. Only by way of indulgence, further time of four weeks is granted to the Petitioner to comply with the communication dated 21st March 2023 in the matter of pre-deposit under Section 154(2-A) of the said Act.

8. All points on merits are kept open.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)