

VRJ

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

WRIT PETITION NO.1652 OF 2022

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Shanti Tower Cooperative Housing
Society Ltd. ... Petitioner

V/s.

Robert Fernandes & Ors. ... Respondents

Dr. Uday P. Warunjikar for the petitioner.

Mr. P. Ranjan with Mr. Yash Jain i/by Halai & Co. for
respondent No.1.

Ms. M. S. Kajle, AGP for respondent Nos.2 and 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2024

PC.:

1. The Divisional Joint Registrar, by the impugned order, has remanded the revision arising out of issuance of certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960.
2. The petitioner-housing society applied before the Registrar under section 101 of the Maharashtra Cooperative Societies Act, 1960 for recovery of maintenance charges. The Assistant Registrar after giving opportunity of hearing to both sides, issued certificate in favour of the petitioner on 9th October 2017.
3. After issuance of certificate, the respondent No.1 filed a

dispute under section 91 of the Maharashtra Cooperative Societies Act, 1960 seeking various reliefs. According to the respondent No.1, the reliefs prayed under section 91 of the Maharashtra Cooperative Societies Act, 1960 has no relevance to the scope of inquiry under section 101 of the Maharashtra Cooperative Societies Act, 1960.

4. By the impugned order, the Divisional Joint Registrar has remanded proceedings to the Assistant Registrar mainly on the ground that the respondent No.1 was not given copies of relevant documents and it is not clear as to whether the resolutions passed by the societies are stayed by the Cooperative Court and what is the basis of claiming maintenance charges. It is also referred in the order by the Divisional Joint Registrar that the documents of society needs to be adjudicated by the Cooperative Court.

5. It is well settled that the scope of proceedings under section 101 of Maharashtra Cooperative Societies Act, 1960 is summary in nature. Based on documents furnished by the society justifying its claim, the Assistant Registrar after holding summary inquiry needs to adjudicate rights of the parties. Once said certificate is issued, the Cooperative Court's jurisdiction to entertain the dispute in relation to contents of certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960 is barred under Sub-section (3) of section 101 of the said act. Therefore, the issues adjudicated by the Assistant Registrar of Cooperative Society under section 101 of the Maharashtra Cooperative societies Act, 1960 cannot be raised before the Cooperative Court. Therefore, the observations in the impugned order in relation to proceedings

either pending or which requires future adjudication was totally uncalled for.

6. The housing society being applicant before the Assistant Registrar, the applicant needs to prove its claim before the Assistant Registrar based on documents furnished in support of the claim. The scope of inquiry of Assistant Registrar is to adjudicate whether the documents in support of claim are furnished by the society are sufficient to justify the claim. If the documents furnished by the society in support of his claim are sufficient to justify the claim made before the Assistant Registrar, the Registrar needs to issue certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960. Hence, it shall not be necessary to consider any order stay of any resolution or anything in relation to the dispute filed by respondent No.1 after issuance of certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960.

7. Hence, the impugned order passed by the Divisional Joint Registrar dated 24th April 2021 cannot be sustained. The proceedings are remanded back to the District Deputy Registrar Cooperative Society No.3, Mumbai for adjudication afresh on merits.

8. The District Deputy Cooperative Society No.3 shall decide the Revision Application No.25 of 2018 afresh uninfluenced by the observations made in earlier order.

9. Considering the pendency of the writ petition, the Revisional Authority shall decide the revision within three months from the

date of appearance of the parties. The parties shall appear before the District Deputy Registrar Cooperative Society No.3 on 1st February 2024 at 11:00 a.m.

10. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)