

VRJ

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

WRIT PETITION NO.418 OF 2024

Digitally
Signed by
VRJ
Date: 2024.01.22
Time: 15:23:00
IP: 192.168.1.100

M. B. Patil

... Petitioner

V/s.

Pushpanagari Apartment Condominium
& Anr.

... Respondents

Mr. Girish B. Badiger for the petitioner.

Ms. M. S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2024

P.C.:

1. The petitioner is challenging order passed by the Appellate Authority under section 16B of the Maharashtra Apartment Ownership Act, 1970.
2. Condominium of apartment owner challenged the order of respondent No.1 dated 28th April 2022 before the Appellate Authority which is the Cooperative Court. According to the petitioner, the respondent No.1 challenged the order dated 28th April 2022 before the Divisional Joint Registrar despite impugned order stating remedy available with respondent No.1 was Cooperative Court. According to the petitioner, despite raising objection regarding maintainability of appeal before the Divisional Joint Registrar, the respondent No.1 proceeded with hearing of

appeal and, therefore, benefit of section 14 of the Limitation Act, 1963 could not have been given to the respondent No.1.

3. On perusal of section 16B of the Maharashtra Apartment Ownership Act, 1970, it appears that any person aggrieved by the direction or decision of the Registrar can approach Cooperative Court by way of appeal. Proviso to Sub-section (2) of section 16B of the Maharashtra Apartment Ownership Act, 1970 confers power of condonation of delay if the appellant provides sufficient cause for not filing the appeal within the time prescribed.

4. According to respondent No.1, the respondent No.1 filed a compliant before the Deputy Registrar of Cooperative Societies on 27th October 2021 seeking direction to the petitioner to comply with guidelines of 4th July 2019 and to reinstate redevelopment process. On 28th April 2022, respondent No.1 received the order passed by the Deputy Registrar.

5. The respondent No.1 initially filed appeal before the Divisional Joint Registrar. However, the Divisional Joint Registrar dismissed the appeal holding that the remedy of respondent No.1 is to approach the Cooperative Court conferred with power under section 16B of the Maharashtra Apartment Ownership Act, 1970 to entertain appeal against an order passed under section 16A of the Maharashtra Apartment Ownership Act, 1970.

6. The respondent No.1 filed an application for condonation of delay stating that respondent No.1 approached authority provided under the provisions of the Maharashtra Cooperative Societies Act, 1960 under bona fide impression and, therefore, prayed for

condonation of delay by giving benefit of section 14 of the Limitation Act, 1963

7. The ordinary remedy in relation to order passed by the Registrar under the provisions of the Maharashtra Cooperative Societies Act, 1960 is to approach either the Appellate Authority or Revisional Authority under the provisions of the Maharashtra Cooperative Societies Act, 1960. Ordinarily, the orders passed by the Assistant Registrar or Deputy Registrar are challenged before the Divisional Joint Registrar either by way of appeal or revision.

8. It, therefore, appears that adopting the ordinary remedy of enforcement of rights conferred under the Maharashtra Cooperative Societies Act, 1960, respondent No.1 approached the Divisional Joint Registrar. However, on dismissal of appeal, he approached the Cooperative Court. Considering the ordinary scheme of the Maharashtra Cooperative Societies Act, 1960 and orders passed by the authorities under the Maharashtra Cooperative Societies Act, 1960, the proceedings initiated by respondent No.1 before the Appellate Authority entertaining challenge to the order passed by the Registrar under the provisions of the Maharashtra Cooperative Societies Act, 1960 cannot be termed as mala fide. Therefore, the Cooperative Court has rightly extended benefit of “good faith” to the respondent No.1.

9. Therefore, merely because the order specifies remedy available with Cooperative Court or on objection being raised by the petitioner about maintainability of appeal, considering the scheme of the Maharashtra Apartment Ownership Act, 1970 and

section 16, 16A of the Maharashtra Apartment Ownership Act, 1970 and nature of rights sought to be enforced before the authority under section 16A of the Maharashtra Apartment Ownership Act, 1970, the order passed by the Appellate Authority condoning the delay cannot be termed as perverse. Since the Appellate Authority has exercised its jurisdiction in positive manner, the superior Court need not interfere with such positive exercise of jurisdiction in the absence of perversity. Hence the writ petition stands dismissed. No costs.

10. It is made clear that the issue relating maintainability of appeal at the instance of persons who filed appeal is kept open to be agitated in the appeal.

(AMIT BORKAR, J.)