

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11300 OF 2024**

Rakesh Shah and Ors.

... Petitioners

Versus

Divisional Joint Registrar and Ors.

... Respondents

.....

Mr. Simil Purohit a/w. Mr. Vishal Raman, Mr. Pratik K. Shah i/b. Mr. Pratik K. Shah, Advocates for the Petitioners.

Mr. R.S.Pawar, AGP for Respondent Nos. 1 and 3 -State.

Mr. Bhavesh Parmar a/w. Ms. Reshma Nair, Mr. Devmani Shukla & Mr. Rajesh Sohani i/b. Devmani Shukla, Advocate for Respondent No.2.

Ms. Zehra Sayyed, Advocate for Respondent No.4.

CORAM : R. M. JOSHI, J.**DATED : 12th AUGUST, 2024.****P.C. :**

1. This petition is moved for ad-interim relief.
2. Petitioners are seeking stay to any action being initiated pursuant to the order dated 30.04.2024 passed by the Divisional Joint Registrar Co-operative Societies Mumbai Division, Mumbai whereby a sanction was granted under Section 148(3) of the Maharashtra Co-operative Societies Act, 1960 for prosecution against the respondent Nos. 1 to 9 herein. It is further directed to the Deputy Registrar of Co-operative Societies, P-Ward, Mumbai to initiate an enquiry in respect of any official irregularities in the affairs of the respondent society.

3. Learned counsel for the petitioners has drawn attention of the Court to the various litigations between the parties. According to him, while issuing the order in question, no finding is recorded with regard to willful failure on the part of the petitioners to comply with the order passed by the Co-operative Court. It is also contended that there is no finding to the effect that there is tampering or otherwise alteration of the record. In his contention in absence of such finding, direction of prosecution against the petitioners does not arise.

4. Learned counsel for the respondents though sought time to file affidavit in reply for want of short notice from the petitioners of the petition, but he objected to the maintainability of the petition on the ground that revision is provided under Section 154(2) of the Act. It is his further submission that in respect of non compliance of the order passed by the Co-operative Court, proceedings are pending including contempt proceedings before this Court and any order passed by this Court may have adverse effect on those proceedings.

5. This is ad-interim stage and any observation made by this Court would be on prima facie consideration of the material on record. At this stage, Court is required to see whether there is prima facie substance in the contention of the petitioners with regard to the compliance of Section 146, more particularly (m) & (p). A perusal of the order impugned does not

even indicate that there is a willful failure on the part of the petitioners to comply order of the Cooperative Court. Similarly, no finding is recorded with regard to the any alteration or falsification of record. Having regard these such prima facie case is made out by the petitioners that till the next date of hearing no precipitatory action on the basis of impugned order should be initiated. Hence it is directed accordingly. It is clarified that observations made herein are only prima facie observations for entertaining prayer of petitioner at ad-interim stage and shall not bind any other proceedings.

6. Issue notice to the respondents, returnable on **19th September, 2024**. Mr. Pawar, learned AGP waives service of notice for respondent Nos. 1 and 4, Ms. Sayyed, waives service of notice for respondent No.4 and Mr. Shukla waives service of notice for respondent No.2.

7. Any affidavit-in-reply to be filed before the next date of hearing by furnishing copy in advance to the other side,

(R. M. JOSHI, J.)

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