



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO. 7204 OF 2018

RANJANWAN COOPERATIVE HOUSING SOCIETY THROUGH ITS
CHAIRMAN V N PATIL

VERSUS

GEETA SARDARSING SHEVGAN AND ANOTHER

Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. U. S. Hashmi i/b
Mr. Shriram Deshmukh, Advocate for the Petitioner
Mr. S. G. Sangle, Addl. GP for the Respondent/State
Mr. V. D. Salunke, Advocate for Respondent No.1

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the judgment and order dated 21/12/2016 passed by the Member, Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad in Appeal No. 89/2014, whereby the judgment and award passed by the Cooperative Court, Aurangabad in Case No. CCA-118/2007 came to be modified.
3. The parties are referred to as 'Disputant' and 'Society' for the sake of convenience.
4. There is no denial of the fact that the dispute has been

raised before the Cooperative Court by the widow of the original Member of the Society. There is however, dispute with regard to the continuation of the said membership. The facts appearing from the record indicate that the Cooperative Society was formed for the purpose of providing plots to its Member for constructing houses. Sardarsing Shevgan was the Member of the Society and has paid the membership fees so also contribution towards the purchase of the plot. There occurred some issues in respect of the survey No. 49 on account of the encroachment being done in the said survey and as a result of which the plots therefrom could not be allotted to the Members. The Society, therefore, took a decision to sale the said plot, in the general body and resolution was passed to that effect. Pursuant to the said resolution the Members were communicated to give an option as to whether the Member would like to have a alternate plot or refund of the amount. The said communication was done on 16/07/1990. It is case of the Society that in response to the said communication no option was provided by the Member i.e. husband of Disputant. Whereas, the Member claims such option was given by letter dated 30/07/1990. There are also two communications on record, one addressed by Society dated 15/06/1991 intimating forfeiture of the membership of the Member and response thereto by the Member by letter which was responded. Thereafter, the original Member died on 30/06/1998. The Respondent who is the widow of the original Member tried to ventilate

her grievance of non allotment of plot before the authorities under the Act and ultimately the dispute came to be filed before the Cooperative Court.

5. The Society filed written statement before the Cooperative Court specifically raising issue in respect of the limitation so also the right of the widow of the Member to get any relief. It is also contended that she is not the Member of the Society nor any allotment has been done in her favour. With these pleadings, issues were framed by the Cooperative Court.

6. Admittedly, the Disputant entered the witness box and lead evidence on oath. Her testimony, however, has gone unchallenged. The Society failed to lead any evidence in rebuttal. The Cooperative Court by judgment and award dated 30/09/2013, partly allowed the dispute directing the Society to pay an amount of Rs.6,000/- along with the interest at the rate of 12% per annum for the period from 26/09/2007 till realization of the claim.

7. The Society never took exception to the said award, however, the Disputant preferred Appeal No. 89/2014 challenging the order passed by the Cooperative Court. The said challenge was accepted by the Appellate Court and by order dated 21/12/2016, the judgment and award passed by the Cooperative Court came to be modified in following terms;

*"1) The appeal No. 89/2014 is hereby disposed off.
2) The judgment and award dated 30/09/2013 passed by the Judge, Cooperative Court Aurangabad, in the dispute No. 118/2007 is hereby set aside and replaced as under.*

- a) The dispute no.118/2007 before Cooperative Court Aurangabad, is hereby allowed.*
- b) The opponent society is directed to allot one plot to the disputant at par with other members.*
- c) The society is entitled to recover additional cost as decided by the management.*
- d) The dispute is dismissed against the opponent no.2*
- e) The opponent no.1 to pay cost of the dispute to the disputant and bear its own.*

3) There is no cost of appeal."

8. The Society being aggrieved by this judgment and order, preferred this Petition.

9. Learned Senior Advocate appearing on behalf of the Society submits that the Disputant has filed the dispute before the Cooperative Court belatedly much after the prescribed period of limitation for filing the dispute. It is his submission that the forfeiture of the membership has been done by letter dated 15/06/1991 and since then the dispute ought to have been filed within a period of six years. It is his submission that though separate Application for condonation of delay was filed and that the Cooperative Court in most causal manner has condoned the delay. It is his submission that since the Society was not aggrieved by the order passed by the Cooperative Court of directing the refund of amount of Rs.6,000/- along with the interest at the rate of 12% per annum, there was no occasion for the Society to prefer any appeal

against the said judgment and award. It is his submission that before the Appellate Court, however, a prayer was made for remand of the dispute before the Cooperative Court to enable the Cooperative Society to cross-examine the Disputant and also to lead evidence in support of its contention. It is further submission that unless the resolution passed by the Society has been challenged and the same is set aside, there could be no reason or justification for grant of any relief in favour of the Disputant. He placed reliance on the judgment of the Co-ordinate Bench of this Court in case of ***B. R. Ballal and others Vs. Atomica Co-operative Housing Society Ltd.***¹

10. Learned Counsel appearing on behalf of the Disputant supported the impugned order. He drew attention of the Court to the documents filed along with reply to contend that without any authority construction of marriage hall etc. is done and therefore it cannot be permitted to be claimed that plots are not available and that order of Cooperative Appellate Court cannot be implemented.

11. There is no dispute about the fact that the period of limitation has been prescribed for preferring the dispute before the Cooperative Court, however, at the same time the delay caused in filing of the dispute could be condoned in appropriate cases. Herein this case though no separate Application for the condonation of delay was filed,

¹ 1988 C.T.J.292

there is averment in the dispute petition with regard to the condonation of delay. The Cooperative Court accepted the case of the Disputant and condoned the delay.

12. Though there is substance in the contention of the learned Senior Advocate for the Society that since the final decree was not to be challenged by the Society, there occurred no occasion for the Society to file Appeal against the findings recorded against it. Even if it be so, it was open for the Society to take exception to the said finding by even making submission before the Cooperative Appellate Court. Perusal of the order of the Cooperative Appellate Court does not indicate so. As such, there is no challenge to the findings recorded by the Cooperative Court in respect on the issue of limitation. This Court, therefore, finds no substance in the contention of the Petitioner with regard to the dispute becoming not entertainable. The said order of condonation of delay has attained finality.

13. Since the dispute was filed by the Disputant, initial burden was on the Disputant to substantiate her case about her husband i.e. the original Member having communicated the option to Society pursuant to the letter dated 16/07/1990 issued by the Society. The evidence of the Disputant in this regard on oath has gone unchallenged. This is not the case, wherein there is only oral statement of the Disputant to support the said submissions, however, the same is duly

corroborated by the documentary evidence on record. Since the Disputant was not cross-examined her version has gone unchallenged. The Disputant therefore, by leading cogent evidence that substantiate her case and the onus has shifted upon the Society to prove otherwise.

14. Admittedly, the Society has not lead any evidence. Before the Appellate Court what was sought to be argued is that this is a case, wherein there has to a remand of the proceedings for afresh decision before the Cooperative Court. Needless to say that the order of remand cannot be passed causally or just for asking and unless the case is covered by the provisions of Order 41 Rule 23, 23A or 25, there was no question of the Appellate Court having remanded the said proceedings for decision afresh. The refusal of the part of the Appellate Court to remand the proceedings therefore cannot be faulted with.

15. Suffice it to say that once the Disputant has established the case of providing option of the alternate plot, the Cooperative Court was not justified in partly allowing the dispute and directing the refund of the amount. The error has been rightly corrected by the Appellate Court within its jurisdiction. This Court, therefore, finds no perversity in the order impugned in order to cause any interference therein.

16. As a result of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)

ssp