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

**WRIT PETITION NO.819 OF 2025**

Vilas Sakharam Patil & Anr. … Petitioners
**V/s.**
Divisional Joint Registrar, Cooperative Societies, Kolhapur Division & Ors. … Respondents



Mr. Ruturaj Pawar for the petitioners.

Mrs. V.S. Nimbalkar, AGP for respondent Nos.1 and 2-State.

Mr. Manoj A. Patil i/by Mr. Akash M. Murudkar for respondent No.7.

**CORAM : AMIT BORKAR, J.**

**DATED : MARCH 4, 2025**

**P.C.:**

**1.** The present writ petition, invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, assails the legality and propriety of the order dated 20th December 2024 passed by respondent No.1, whereby the order of disqualification passed by the Assistant Registrar in exercise of powers conferred under Section 154 of the Maharashtra Cooperative Societies Act, 1960 ("the said Act") has been set aside. The said order pertained to the disqualification of respondent No.7 on the ground that he had incurred a disqualification under Section 73CA(1)(c)(2) of the said Act, thereby rendering him ineligible to continue as a member of the managing committee of respondent Nos.3 and 4-societies.

**2.** The factual matrix leading to the institution of the present writ petition is set out hereinbelow: Respondent No.7 was duly elected as a member of the managing committee of respondent Nos.3 and 4-cooperative societies. The election of respondent No.7 was conducted in accordance with the prescribed procedure, and he assumed office pursuant to the declaration of results.

**3.** The petitioner preferred a complaint before the Registrar, inter alia, contending that respondent No.7 had obtained a term loan from a cooperative society and had not discharged his financial liability prior to his election. The petitioner alleged that respondent No.7 had only repaid the said loan after assuming office as a member of the managing committee of respondent Nos.3 and 4-societies. It was, therefore, asserted that respondent No.7 stood disqualified under Section 73CA(1)(c)(2) of the said Act, which unequivocally stipulates that a member who has defaulted in payment of dues owed to any society shall be ineligible to be elected or to continue as a member of the managing committee.

**4.** In response, respondent No.7 traversed the allegations and contended that he had liquidated the outstanding dues on 12th May 2023, and, as on the date of filing of the disqualification application under Section 73CA, no subsisting liability remained against him. He thus urged that since there were no outstanding dues on the relevant date, the disqualification contemplated under the statutory provision would not be attracted, and he could not be ousted from the managing committee on that ground alone.

**5.** Upon a thorough appreciation of the rival contentions, the Assistant Registrar, by an order dated 4th October 2024, arrived at a categorical finding that the repayment of dues by respondent No.7 after his election as a member of the managing committee did not absolve him of the disqualification that had already been incurred. The Assistant Registrar noted that the crucial date for determining disqualification was the date of scrutiny of nomination forms, and, as on that date, respondent No.7 had undisputedly defaulted in repayment of the loan availed from the cooperative society. Consequently, it was held that respondent No.7 had incurred a disqualification under Section 73CA(1)(c)(2), warranting his removal from the managing committee.

**6.** Aggrieved by the said order, respondent No.7 preferred a revision application before the Divisional Joint Registrar, who, vide the impugned order, set aside the disqualification order of the Assistant Registrar. The Divisional Joint Registrar recorded a finding that respondent No.3-society had not obtained a recovery certificate under Section 101 of the said Act, nor had a notice demanding the defaulted amount been issued to respondent No.7. Emphasis was placed on the certificate dated 8th June 2024, which, according to respondent No.1, established that respondent No.7 could not be deemed a defaulter within the meaning of Section 73CA(1)(c)(2). It was, therefore, held that in the absence of a formal determination of default by the society and the requisite procedural compliance, the disqualification ascribed to respondent No.7 could not be sustained in law.

**7.** The petitioner, being dissatisfied with the said order, has approached this Court, contending that the interpretation placed by the Divisional Joint Registrar is erroneous and contrary to the legislative intent underlying Section 73CA(1)(c)(2). It is urged that the statutory provision does not envisage any further procedural formalities beyond the existence of an outstanding liability at the relevant time, and once it is established that a candidate was a defaulter on the date of scrutiny of nomination forms, the disqualification would operate per se, irrespective of any subsequent repayment.

**8.** In view of the rival submissions and the legal issues involved, this Court is called upon to adjudicate whether the repayment of dues subsequent to the election of a managing committee member can cure the disqualification already incurred under Section 73CA(1)(c)(2).

**9.** Upon a thorough perusal of the record, it emerges that respondent No.7 assumed office as a member of the managing committee of respondent Nos.3 and 4-societies on 19th January 2023. It is also borne out that he discharged his outstanding dues to respondent No.3-society only on 2nd June 2023, whereas his liability towards respondent No.4-society was settled on 19th January 2023 itself. In this backdrop, it is indisputable that on the date of his election and for a certain duration thereafter, respondent No.7 remained a defaulter within the purview of Section 73CA(1)(c)(2) of the said Act.

**10.** The legal position as regards subsequent repayment not obliterating a disqualification already incurred is no longer res integra. The Supreme Court in Pundalik v. District Deputy Registrar, Cooperative Societies, Chandrapur & Ors., reported in (1991) 2 SCC 423, authoritatively laid down that once a person incurs disqualification by reason of default in repaying a loan, the subsequent liquidation of that defaulted amount does not efface the disqualification created under the then existing statutory scheme. The said judgment interpreted provisions analogous to Section 73CA(1)(c)(2) of the present Act, then contained in Section 73FF, and concluded that a retrospective cure by repayment is not sanctioned under the statutory framework. Hence, the ratio decidendi in Pundalik militates against the contention that respondent No.7 ceased to be disqualified upon settling his dues post-election.

**11.** In my considered view, the Divisional Joint Registrar, by setting aside the order of the Assistant Registrar, has misread the legislative intent underlying the disqualification provisions. The Assistant Registrar's reasoning was well-founded on the incontrovertible fact that respondent No.7 was indeed in default on the critical date—namely the date of scrutiny of nomination forms—and thus could not have maintained his candidature in the face of an express statutory bar. Consequently, the Divisional Joint Registrar's decision cannot be sustained, as it runs counter to the weight of both legal authority and factual evidence.

**12.** Resultantly, for the reasons recorded hereinabove, the petitioner has established a clear case warranting interference in exercise of this Court's writ jurisdiction. In consequence, the rule is made absolute in terms of prayer clause (b). Parties to bear their own costs.

**(AMIT BORKAR, J.)**