

Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.5014 OF 2024

Shyam Murlidhar Moolchandani

...Petitioner

Versus

State of Maharashtra & Ors.,

...Respondents

Ms. Uma Palsuledesai, AGP for Respondent Nos. 1 & 2.

Mr. Zulfiqar Jariwala a/w Sakshi Jain for Respondent No.4.

Mr. R. Peerbhoy for Respondent No.5.

CORAM : R.I. CHAGLA, J.

DATED : 29th JANUARY, 2025.

ORDER :

1. By this Writ Petition, the Petitioner has sought for quashing and setting aside of the order passed by the Respondent No.3 - Deputy Registrar, A Ward, Co-operative Society dated 20th September, 2024 and for directing Respondent No.3 to re-hear the Application dated 9th August, 2024 filed by the Respondent No.4 after giving personal hearing and adequate opportunity to the Petitioner.

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2. Mr. Zulfiqar Jariwala, learned Counsel appearing for the Respondent No.4 who is the contesting party and had filed the proceeding before Respondent No.3 pursuant to which the impugned order had been passed, has no objection for the quashing and setting aside of the impugned order and for *de-novo* adjudication of the Application dated 9th August, 2024 by Respondent No.3 after giving personal hearing and adequate opportunity to the Petitioner.

3. The learned Counsel appearing for the Petitioner has further raised the issue of jurisdiction on the ground that Section 154(3)(9) is not applicable and the applicable provision is Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (“**MCS Act**”). He has submitted that a Suit has already been filed in this Court and thereafter had been transferred in the City Civil Court in respect of title to the subject Flats and is being proceeded with before that Court.

4. Accordingly, having considered the submission, the Writ Petition is required to be disposed of by keeping rights and contentions of the Petitioner open including the contentions on jurisdiction as well as limitation for filing Appeal under Section 23(2) of the MCS Act.

5. The Writ Petition is accordingly made absolute in terms of prayer Clause (a).

6. The Respondent No.3 - Deputy Registrar, A Ward, Co-operative Societies shall re-hear the application dated 9th August, 2024 filed by Respondent No.4 after giving personal hearing and adequate opportunity to the Petitioner including opportunity to the Petitioner to raise the issue of jurisdiction as well as limitation as aforementioned.

7. The Respondent No.3 shall make endeavour to complete the hearing of the application within a period of six weeks from the date of this order and for a period of two weeks from communicating the fresh order shall not execute the said order.

8. The Writ Petition is accordingly disposed of. There shall be no orders as to costs.

[R.I. CHAGLA, J.]