
(2000) 08 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 712 of 2000

Rambhau Samarth

APPELLANT

Vs

Arti Ingole (Smt.) and Others

RESPONDENT

Date of Decision : 23-08-2000

Acts Referred:

Citation : (2001) 2 BomCR 206

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.S. Jaiswal and Rahul Tajne, for the Appellant; A.R. Patil, for the respondents 1 and 2, A.V. Gupta, A.P. Shende and R.D. Bhuihar for the respondent No. 3 and A.G.P., for the respondent No. 5, for the Respondent

Judgement

1. Rule.

Rule made returnable forthwith. Heard by consent.

This writ petition takes exception to the order passed by the Member of the Maharashtra State Co-operative Appellate Court, Mumbai, Nagpur Bench, Nagpur in Appeal Nos. 105 of 1996 and 108 of 1996 dated 8th July, 1999. The learned member has passed that order on the application filed by the respondents 1 and 2 in the said appeal, praying for the following relief :

"It is, therefore, prayed that this Hon"ble Court be pleased to fix the appeal before the Division Bench at Mumbai on any date and further till its disposal for the final hearing, in the interest of justice or in alternative place it for hearing before Single Bench at Nagpur."

The learned Member of the Appellate Court, after considering the rival submissions, was of the view that such an application ought to have been filed before the President of the Appellate Court; and since no such application was moved by either party, preferred to direct that the appeal shall be heard by the Single Bench at Nagpur. In my view, there is no infirmity in the said reasoning

adopted by the learned Member of the Appellate Court. Learned Counsel for the respondents No. 4 and 5 points out that even the Member of the Appellate Court is competent to try and decide the appeal which is pending before the Bench. In support of this contention, reliance has been placed on sub-section (4) of section 149 of the Maharashtra Co-operative Societies Act as well as Regulation 2(e), which defines "Bench" to mean the Tribunal constituted by the President under sub-section (4) of section 149. There is no dispute that the Bench has been constituted by the President at Nagpur. In other words, jurisdiction of the Nagpur Bench is not in issue but the request which was made before the Bench was to have a direction to hear the matter by the Division Bench at Mumbai. Learned Member of the Appellate Court was, therefore, justified in rejecting the said request on the ground that the said prayer could be made before the President of the Tribunal.

2. Learned Counsel for the respondent Nos. 1 and 2 now contends that they would move appropriate application before the President of the Tribunal with a request to place the matter before the Division Bench at Mumbai. It is not necessary to make any observation with regard to the said request and it is open to the respondents 1 and 2 to take out necessary application before the President, which will be decided in accordance with law. Respondent Nos. 1 and 2 undertake to file the said application before the President within two weeks from today and if such an application is filed, appropriate orders be passed on the said application within two weeks from the date of its presentation.

The writ petition is disposed of in the above terms with no order as to costs.