

**(2009) 09 CHH CK 0005**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (C) No. 922 of 2009**

Tarachand Mannade

APPELLANT

Vs

Dharam Das Mahilaang and Others

RESPONDENT

**Date of Decision :** 02-09-2009

**Acts Referred:**

Chhattisgarh Cooperative Societies (Amendment) Act, 2003 — Section 77(1)  
Madhya Pradesh Co-operative Societies Act, 1960 — Section 19AA, 77(1), 77(2)

**Citation :** (2010) 1 CGLJ 191

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Dinesh R.K. Tiwari, for the Appellant; Arun Sao, Government Advocate for Respondents Nos. 6, 7 and 8, for the Respondent

**Final Decision :** Dismissed

## Judgement

Satish K. Agnihotri, J.—Heard.

2. The Petitioner impugns the order dated 9.1.2009 (Annexure P/1), passed by the Registrar, Cooperative Societies, Chhattisgarh, Raipur in Appeal Case No. 77(1)/652/M/2008 Dharamdas Mahilange v. Tarachand Mannade and Ors.

3. The Petitioner and the Respondents No. 1 to 3 i.e. Dharamdas, Smt. Maya Bai and Smt. Shanti Bai were elected Director of the Cooperative Society, Achola. The Petitioner had filed an application before the Deputy Registrar, Cooperative Societies, Mahasamund for declaration to the effect that the Respondents No. 1 to 3 were disqualified to remain as Director of the society on the ground that they had obtained loan from the society but did not pay the full and final amount. The matter was sent to the Respondent No. 5/Society for initiating proceedings u/s 19AA of the Chhattisgarh Cooperative Societies Act 1960. By letter dated 7.9.2007 the matter was sent back to the Deputy Registrar with the report that the Respondents No. 1 to 3 are not liable to be declared as disqualified as they are not defaulter (? ?). The Deputy Registrar, Cooperative Societies, Mahasamund by order dated 19.3.2008 passed in Case No. 1/2007-08

allowed the appeal filed by the Petitioner on the ground that the report submitted by the Respondent No. 5/Society was not correct. Thus, the Respondents No. 1 to 3 were declared as disqualified to remain as Director of the Society.

4. Being aggrieved the Respondents No. 1 to 3 preferred an appeal before the Registrar, Cooperative Societies, Chhattisgarh, Raipur u/s 77(1) of the Act, 1960, which was allowed by the impugned order dated 9.1.2009 (Annexure P/1), passed by the Court of Registrar, Cooperative Societies, Chhattisgarh. Thus, the Petitioner has filed this petition.

5. Learned Counsel appearing for the Respondents/State submits that Section 77(1) of the Chhattisgarh Cooperative Societies (Amendment) Act, 2003 (for short "the Act, 2003") provides for the first appeal against every original order passed under the Act or Rules of the Cooperative Societies. Section 77(2)(ii) provides for second appeal to the State Government against every order passed in first appeal by the Registrar or Additional Registrar. The Respondents No. 1 to 3 had preferred first appeal before the, Registrar, Cooperative Societies, u/s 77(1) of the Act, 2003 against the order dated 19.3.2008 passed by the Deputy Registrar, Cooperative Societies. Thus, the Petitioner has an alternative statutory remedy of filing a second appeal before the State Government against the impugned order dated 9.1.2009 (Annexure P/1), passed by the Registrar, Cooperative Societies.

6. Learned Counsel appearing for the Petitioner submits that the order dated 19.3.2008 (Annexure P/2) is final under the provisions of Section 19AA of the Act, 1962, thus no appeal or alternative remedy is available to the Petitioner. The impugned order dated 9.1.2009 (Annexure P/1) passed by the Registrar amounts to review of the order dated 19.3.2008, which was passed by the Deputy Registrar under the authority of the Registrar.

7. On perusal of the provisions, as afore-stated, it is apparent that the submission of learned Counsel appearing for the Petitioner in regard to the non-availability of alternative statutory remedy to the Petitioner, is misplaced. It is evident from the impugned order dated 9.1.2009 that the first appeal was preferred against the order dated 19.3.2008, passed by the Deputy Registrar, Cooperatives Societies, Mahasamund, u/s 77(1) of the Act, 2003. The order dated 9.1.2009 was passed by the Joint Registrar, in delegation of the power of the Registrar, as the order has been passed by the Court of Registrar, Cooperative Societies. Thus, it cannot be held that the order was not passed by the Registrar, but it was passed by the Joint Registrar, reviewing the order dated 19.3.2008, passed by the Deputy Registrar. The impugned order dated 9.1.2009 is, as such, appealable to the State Government. It is obvious that the Petitioner may file an statutory appeal to the State Government under the provisions of Section 77(2)ii of the Act, 2003 against the impugned order dated 9.1.2009 (Annexure P/1). It is well settled that normally the High Court should not interfere if there is an adequate, statutory, efficacious alternative remedy is provided by the statute, party must exhaust the statutory remedy before

resorting to writ jurisdiction. See K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , State of H.P. and Ors. v. Gujarat Ambuja Cement and Anr. (2005) 6 SCC 499, U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another,

8. This Court in Writ Petition (C) No. 2164 of 2008 Shivratan Agariya and Anr. v. State of Chhattisgarh and Ors. in para 6 and 7 observed as under:

6. This Court in Thobhani Auto Mobiles v. State of Chhattisgarh and Ors. while dealing with the issue of alternative remedy observed that normally the High Court should not interfere if there is an adequate, efficacious alternative remedy where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction, except when a very strong case is made out for making a departure.

7. Applying the well-settled dicta laid down by the Supreme Court as well as this Court on the issue of availability of alternative remedy to the facts of the case, this petition is dismissed as not maintainable, as no strong case has been made out for exercise of extraordinary discretionary jurisdiction in favour of the Petitioners. However, liberty is reserved to the Petitioners to take recourse to the alternative statutory forum that may be available to them under the provisions of law. Consequently, interim order passed earlier stands vacated.

9. In view of the foregoing, without expressing any opinion on the merits of the case, the petition is dismissed as not maintainable. However, liberty is reserved to the Petitioner to avail the alternative statutory remedy, in accordance with law, if so advised.