
(2002) 04 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition Lodg. No's. 856 and 877 to 880 of 2002

Vinodchandra H. Doshi and Another

APPELLANT

Vs

Echjay Forgings Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2002 Bom 335 : (2002) 3 ALLMR 334 : (2002) 4 BomCR 438 : (2002) 3 BOMLR 900 : (2002) 2 MhLj 898

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; G.W. Mattos, A.G.P., R.J. Mane, A.G.P. and M.S. Doctor, instructed by Bachubhai Munim and Co., for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—Affluent have tremendous capacity to litigate even for a frivolous point. They have a great ability to occupy very large part of valuable time of the Courts, The present is one of such litigating activity carried on by the members of one and the same family. The present feud is between three uncles on one side and five nephews on the other. It has shocked me when I perused the proceedings to note the subject matter of the group of the present petitions. It is over the small office or post in the managing committee of the cooperative society which is wholly occupied by the aforesaid uncles and the nephews and nobody else. There appear to be nine members of the society and they being blood relations, they are not able to see eye to eye. My efforts to resolve the controversy with the help of both the learned Counsel proved to be a shocking failure on account of an uncompromising and adamant attitude on both the sides of the parties. The counsel of course were helpless.

2. The petitioners in the above petitions are aggrieved by the order dated 13th February, 2002 passed by the Deputy Registrar of Co-operative Societies in

appeal u/s 152A of the Maharashtra Co-operative Societies Act, 1960. (hereinafter referred to as the Act).

3. The elections for the managing committee of the society were declared and were to be held by the election officer. It appears that the nomination papers of the respondent Nos. 1 to 4 and 6 were rejected by the election officer by his order dated 4th March, 2002 on two grounds viz., (i) The respondent No. 1 was a defaulter as it had not paid maintenance bill dated 5th October, 2001, for the period of October, 2001 to March 2002 and (ii) the respondent No. 1 did not satisfy the eligibility criteria of two years membership of the society.

4. The respondents were aggrieved by the aforesaid order of the election officer. The learned appellate authority heard the appeal u/s 152A of the Act and reversed the decision and order of the election officer by his order dated 12th March, 2002. The learned appellate authority considered the issue of the respondent No. 1 being a defaulter u/s 73FF(1)(i)(e) for nonpayment of the maintenance bill of the society. The authority has noted that the maintenance bill pertained to the period from October, 2001 to March 2002. The bill was dated 5th October, 2002. He also noted that in the said bill what was the amount of default was not stated. He also noted that the bill reflected that the respondent No. 1 had paid an amount in advance and that it was adjusted in the present bill. The authority has also noted that the balance shown in the bill was not a default but was only a liability arising under the said bill issued by the society. According to the authority, such liability noted in the bill cannot be termed as a default. Secondly, it was further noted by the authority that no notice u/s 73FF(1)(i)(e) was given by the society and in the absence of such mandatory requirement of the notice, the respondent No. 1 could not be held as defaulter, disentitling it from filing nomination and from proposing and seconding other nominations for the election of the managing committee. The learned authority also observed that the decision of the election officer was in contravention of the principles of natural justice as the respondent No. 1 was not given an opportunity of making payment of the balance of the bill. He has also noted that as soon as the respondent No. 1 was pointed out the unpaid amount of the bill, it immediately paid the same.

5. The second ground of rejection of the nomination of the respondent No, 1 was that it had not completed two years of membership of the society as is prescribed under the law to become eligible to contest the elections for the managing committee of the society. In para 2 of the order, the learned authority has considered the history of the litigation in brief and has recorded that pursuant to the order passed by this Court, in a company petition, on 1st January 1983, the respondent No. 1 had become a member of the society in the place of the predecessor as indicated in the said order of the High Court. He has also noted that by his order dated 7th August 2000, he had held that the respondent No. 1 had become the member of the society. The said order was challenged by filing an appeal before the Divisional Joint Registrar who was

pleased to set aside the order. The said order of the divisional joint registrar was further challenged by filing a writ petition in the High Court and by an order dated 31st March 2001 in the said writ petition, the order of the divisional joint registrar was stayed, It further appears that the first order passed on 24th October, 2001 was finally confirmed by the High Court and the respondent No. 1 became member retrospectively with effect from 1st January 1983. On the basis of the aforesaid reasons the appellate authority set aside the order of the election officer and held that the respondent No. 1 was a member of the society from 1st January, 1983 which would certainly mean more than two years and, therefore, it was held to be eligible to file nomination and to propose and to second others candidature for election. For the aforesaid reasons, the learned appellate authority allowed the appeal and set aside the order of the election officer u/s 152A of the Act and accepted the nomination form of the respondent No. 1 as valid.

6. The petitioners whose nominations were accepted by the election officer are aggrieved by the aforesaid order of the appellate authority and they have approached this Court under Article 226 of the Constitution of India for an appropriate writ to quash and set aside the impugned order of the appellate authority u/s 152A of the Act. The only ground on which the impugned order is assailed is that the petitioners were not impleaded as respondents or opponents in the appeal filed before the appellate authority. According to the petitioners, their nominations were accepted by the election officer and the nomination of the respondents were rejected. In appeal u/s 152A of the Act, the petitioners were entitled to be impleaded and they were entitled to be heard by the appellate authority, before the nomination of the respondents were accepted by the appellate authority.

7. Dr. Naik, the learned counsel for the petitioners has heavily relied upon two orders of two division benches of this Court. The first order is dated 7th December, 1982 (Chandurkar and Gadgil, JJ.) and the second one is dated 26th July 1996 (Ashok Agarwal and S.S. Nijjar, JJ.). According to Dr. Naik, in view of the aforesaid judgments, the petitioners ought to have been Impeded as necessary parties in the appeal u/s 152A of the Act and since they were not impleaded, the decision in the said appeal stands vitiated.

7-A. According to Shri Doctor, the learned counsel for the respondent Nos. 1 to 4 and 6, no writ petition under Article 226 of the Constitution of India would lie against the order of the appellate authority accepting the nominations of his clients. The learned counsel has heavily relied upon Section 152A of the Act, which categorically puts an end to any further challenge to the orders passed by the appellate authority. Shri Doctor further submits that the decision relied upon by Dr. Naik were in respect of the rejection of the nomination on merits and the learned Judges had not considered the question of maintainability of the petition against the orders passed by the appellate authority u/s 152A, The learned Counsel submits that the Legislature has intended that the orders of the

appellate authority u/s 152A concludes the dispute at that end itself and no petition should be entertained against such orders under Article 226 of the Constitution of India which is an extraordinary jurisdiction vested in the High Court to be sparingly exercised. The learned Counsel has very heavily relied upon a later judgment of our division bench (C. Mukerjee, C. J. and Agarwal, J.) in the case of M.P. Lunawat and Anr. v. Rupee Co-operative Bank and Ors., reported in 1989 CTJ 337 . The learned counsel submitted that the aforesaid decision to which one of the learned Judges of the earlier division bench (Agarwal, J.) was a party, has categorically held as under :--

"The Section 152A of Maharashtra Co-operative Societies Act provides for appeal against rejection of nomination papers, but not against acceptance of nomination papers. Therefore, the petitioners appeal before the Commissioner was not maintainable.

2. We ourselves decline to entertain the writ petition against the acceptance of nomination papers;

3. The point involves disputed question which would require protracted trial on evidence. Secondly, after the elections are over the petitioner has more effective remedy by way of election petition against irregularities materially affecting the results of an election. The writ petition is rejected.

(this is the full text of the short order)

Shri Doctor submitted that in the earlier orders whether a writ petition would lie against the order u/s 152A was not decided, while in the above quoted order the division bench has declined to entertain the writ petition against the acceptance of nomination papers. The learned Judges have also observed that the point involved disputed question which would require protracted trial on evidence and that the elections could be challenged if there were irregularities materially affecting the result of the election. The learned Counsel further submitted on the factual aspect of the controversy that the petitioners had suppressed the proceedings of the company petition, whereby the respondent No. 1 had stepped in the shoes of the Echjay Industries, the erstwhile company which was holding the flat as a member of the society. The respondent No. 1 had succeeded to the said company under the orders of the Court and since then, the respondent No. 1 has been holding the flat. The learned Counsel pointed out that what the administrator had done was not to enroll the respondent No. 1 from 7th August, 2000 as a new member but he had only formally recognised the fact that the respondent No. 1 was a member from 1st January, 1983 under the orders of the Court. What the administrator did was not to enroll the respondent No. 1 but he had merely recognised formally the fact that the respondent No. 1 had stepped in the shoes of its erstwhile predecessor, the Echjay Industries Ltd., as a result of the scheme of arrangements between the parties which had taken place in the year 1983 and which was approved by the Company Court and since then the respondent No. 1 is in occupation of the flat about which there is no dispute. Shri

Doctor further supported the order of the appellate authority on the point of default u/s 73FF of the Act. The learned Counsel further submitted that in fact there was no default at all as he had over-paid some amount in the earlier bill which was adjusted in the subsequent bill and the society had demanded the balance of the bill. There was no notice issued by the society u/s 73FF(1)(i)(e) that the respondent No. 1 was in default. According to Shri Doctor mere sending of bill indicating the amount of the bill does not amount to notice for default. Secondly he submitted that there was no notice at all sent by the society in respect of the bill as contemplated by the said provision. The learned Counsel distinguished a bill from a notice and submitted that what the law contemplates is a specific notice pointing out to the Member of the society that he was in default. Had the society sent such notice that the respondent No. 1 was in default, the same would have been complied with forthwith. In the absence of such a notice, there was no compliance of Section 73FF(1)(i)(e) of the Act. Shri Doctor pointed out that the calculations done by the appellate authority in respect of the bill is absolutely perfect and there is no default in making payment of the relevant bill to the society. He further submitted that the respondent No. 1 had made payment immediately. Shri Doctor further pointed out that the technical objections of the petitioners that they were not impleaded before the appellate authority cannot be entertained in the present petition, as no petition would lie against the order of the appellate authority. He further added that there is absolutely nothing new which has been pointed out by them in the petition and they have not shown any valid and cogent reasons as to in what way they were prejudiced and what contention they would have raised to be considered by the appellate authority. The learned Counsel further submitted that as far as hearing part by the appellate authority is concerned, this Court has heard them sufficiently and the petitioners have not come out with any serious ground which has caused prejudice to them merely because they were not impleaded in the appeal.

8. I am in complete agreement with the submissions made by the learned Counsel for the respondents, Shri Doctor. As far as the merits of the case are concerned, there is nothing new which is pointed out by Dr. Naik to assail the order of the appellate authority. The appellate authority has rightly considered the question of default and has come to a right conclusion that the respondent No. 1 had not received any notice as contemplated u/s 73FF(1)(i)(e) and that there was no outstanding against the respondent No. 1, except the current month's bill which also specifically and admittedly indicated that there was a credit in favour of the respondent No. 1. I agree with Shri Doctor that the bill did not amount to a notice u/s 73FF(1),(i)(e) of the Act. There is definitely a clear distinction between the bill and a notice. The law requires a prior notice to be given to the alleged defaulting party so that it could cure the default on receipt of the notice. Mere sending of a bill for maintenance for the current period certainly does not amount to a notice under the aforesaid provision. Admittedly, there was no separate notice sent by the society to the respondent No. 1. The

disqualification of the respondent No. 1 on the ground of default, therefore, falls to the ground as held by the Appellate Authority. I am of the opinion that the appellate authority has correctly appreciated the fact and the law and his finding does not require any interference by me under Article 226 of the Constitution of India. On the second point of membership for two years of the respondent No. 1, I agree with the submissions of Shri Doctor, the learned Counsel for the respondent No. 1 that under the Company Petition, the respondent No. 1 had stepped in the shoes of the erstwhile member of the society M/s Echjay Industries and under the orders of the High Court, the respondent No. 1 was holding the flat from 1983. What the Administrator of the society had done was a formal recording or recognition that the respondent No. 1 was a member of the society. The fact cannot be denied that under the orders of the High Court in the company petition, the respondent No. 1 had entered in the shoes of the erstwhile member of the society viz., Echjay Industries Ltd., and since then it was in occupation of the flat. It, therefore, cannot be said that the respondent No. 1 was a new member of the society only for a period of less than two years. The learned Appellate Authority has rightly held that the respondent No. 1 was recognised as a member from 1983 onwards under the orders of the High Courts. The learned appellate authority has also rightly concluded that his earlier order recognising the respondent No. 1 as a member was set aside by the divisional joint registrar but the High Court had stayed the order of the divisional joint registrar and the effect thereof was that the earlier order passed by the appellate authority got revived and, therefore, the respondent No. 1 continued to be a valid member of the society. I, therefore, do not find any infirmity in the order of the appellate authority. Dr. Naik has rightly and wisely not taken the matter any further on the factual aspect of the case. I do not find any illegality or infirmity in the order of the appellate authority on these two grounds.

9. Now the question of maintainability of the writ petition against the impugned order of the appellate authority is to be considered. Section 152A as amended reads as under :--

"152A. -- (1) Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, a person aggrieved by the rejection of nomination of a candidate at the election of a committee of any society other than a society specified by or u/s 73G, may file an appeal to the Registrar within three days of the date of rejection of the nomination. The Registrar shall dispose of such appeal within ten days of the date of receipt of such appeal and the decision of the Registrar in appeal shall be final and no further appeal or revision shall lie against the decision of the Registrar in such appeal. In the case of a society specified by or u/s 73G, an appeal shall lie to the Divisional Commissioner who shall dispose of such appeal within ten days from the date of receipt of such appeal and the decision of the Commissioner in appeal shall be final and no further appeal or revision shall lie against the decision of the Divisional Commissioner in such appeal.

(2) Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, the list of validly nominated candidates shall be subject to the decision of any appeal filed under Sub-section (1) and the period between the date of scrutiny of nomination papers and the last date of the withdrawal of candidatures shall not be less than fifteen days."

It would be crystal clear that no further challenge to the order of the appellate authority is permissible by way of appeal or revision. Articles 226 and 227 of the Constitution of India cannot be reduced to the extended provisions of the Maharashtra Co-operative Societies Act. If the Legislature had contemplated to put an end over the litigation after the appellate order, it will not be proper for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution in the given circumstances and in the facts of the present case. The Legislature has unequivocally provided for finality to the order of the appellate authority u/s 152A of the Act. As held by the Supreme Court the Articles 226 and 227 are not the extension of Section 152A or any other provision of the Act. Further it is the discretion conferred on this Court in the interest of justice and to put right any miscarriage of justice. These Articles do not confer any right on the party. There is nothing in this matter to justify the exercise of my discretionary jurisdiction.

10. I have pointed out from the merits of the case that except a technical plea that the petitioners were not impleaded in the appeal, there is no other substantial challenge to the order of the appellate authority which can be validly sustained. The petitioners have staked their whole case on the above referred orders of the two division benches. It must be remembered that the learned Judges did not record their verdict on the issue of maintainability of the writ petition in view of Section 152A of the Act. Further it was a case where before the High Court in the petitions the petitioners had not impleaded the candidates whose nominations were accepted by the election officer. The learned Judges were of the view that the petitioners ought to have impleaded in the petition, the parties whose nominations were accepted as necessary parties. Before me, all the parties have appeared and I have heard one and all the parties. I have also considered and followed the third order of the later third division bench taking a view that no writ petition lies against the acceptance of the nomination for election to the managing committee. In the peculiar facts and circumstances of the present case the petitioners have been fully heard and they had ample opportunity of making out their grievances which according to them they did not have before the appellate authority. Even in their petitions, they have not been able to show how they have been prejudiced or how injustice was done to them by the appellate authority. Except their pining in the petition I do not find any iota of merit in the case.

11. The appellate authority has actually demonstrated how the respondent No. 1 was not a defaulter and how it was not enrolled as member by the Administrator in the year 2000 but it had stepped in the shoes of the erstwhile company as a

result of an order passed by this Court in the year 1983 in the proceedings under the Companies Act, 1956. Both these points of eligibility or disqualification of the respondent No. 1 to become a member of the managing committee have been very rightly considered by the appellate authority and Dr. Naik has been unable to satisfy me as to how the appellate authority was wrong in its conclusions. I, therefore, do not find any reason to interfere with the impugned order of the appellate authority in my extraordinary jurisdiction under Article 226 of the Constitution of India. Dr. Naik has not shown any grave injustice done by the said order to warrant exercise of the extra ordinary discretionary power in favour of the petitioners.

12. The Supreme Court has in a recent judgment in the case of Ouseph Mathai and Ors. v. M. Abdul Khadir reported in AIR 2001 SCW 4672, has explained the scope and parameters of the extraordinary jurisdiction of this Court under Article 226 and Article 227 of the Constitution of India. These articles do not permit the jurisdiction to be exercised merely because there is a wrong decision. I am unable to exercise my extraordinary jurisdiction merely because the petitioners were not impleaded in the appeal before the appellate authority in the absence of any grave injustice or grave wrong or grave dereliction of duty and flagrant abuse of power by the appellate authority having been shown by the petitioners. As it is, as observed by the division bench in the case of M.P. Lunawat (supra) no writ petition can be entertained against the order of acceptance of nomination papers. Further the Supreme Court in the case of Ouseph Mathai, (supra), the Supreme Court in the following paragraphs has observed as under:--

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt article 227 confers a right of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to. keep the inferior Courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such Courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate Courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath, 1994 SCR 565 this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, . In AIR 1975 1297 (SC) this Court held

that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in *R.V. Northumber Land Compensation Appeal Tribunal. Exparte Shaw*, (1952) (1) All ER 122 this Court in *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, held:--

"It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (See *Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others*, . Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the appellate bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

6. In *Laxmikant Revchand Bhojwani and Anr. v. Pratapsingh Mohansingh Pardeshi*, 1995 (6) SCC 756 this Court held that High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in *Koyilerian Janaki and Ors. v. Rent Controller (Munsif) Cannore and Ors.*, (2000) 9 SCC 406 .

7. In the present appeals, the High Court appears to have assumed the jurisdiction under Article 227 of the Constitution without referring to the facts of the case warranting the exercise of such a jurisdiction. Extraordinary powers appear to have been exercised in a routine manner as if the power under Article 227 of the Constitution was the extension of powers conferred upon a litigant under a specified statute. Such an approach and interpretation is unwarranted. By adopting such an approach some High Courts have assumed jurisdiction even in matters to which the legislature had assigned finality under the specified statutes. Liberal assumption of powers without reference to the facts of the case and the corresponding hardship to be suffered by a litigant has unnecessarily

burdened the Courts resulting in accumulation of arrears adversely affecting the attention of the Court of the deserving cases pending before it."

13. In the aforesaid circumstances, in my opinion, the petitions have absolutely no merits and substance and the same amounts to abuse of the process of law and the Court. The petitioners ought to have accepted the decision of the appellate authority and ought to have faced the elections. The Managing Committee of a society is not a seat of power but is a seat of service to the members. It appears that the petitioners have a personal grudge against the respondents though they are their very close blood relations. It appears that the petitioners suffer from a feeble sense of prestige and hollow ego. Such litigation and litigants certainly deserve to be checked in the interest of justice so that we can devote our valuable time for a good and deserving matters and waste our time for such frivolous and flimsy cases brought by the petitioners merely because they have an ability to spend any amount of money on litigation. I am, therefore, constrained to order the petitioners to pay exemplary cost of Rs. 10,000/- to each of the respondent Nos. 1 to 4 and 6 within four weeks from today.

14. The petition is rejected with costs in the aforesaid terms.

15. By my order dated 28th March, 2002 I had refused to grant any interim orders and had directed the elections to be held as scheduled. I had, however, directed the election officer to keep the ballot papers in a sealed cover and not to declare the results of the election. Accordingly, the elections have been held and the election officer has deposited with this Court the sealed envelope which is taken on record. After the decision of the petition as above, I direct the election officer to open the sealed cover and declare the results. The elected body would start functioning in accordance with the bye laws.

16. All concerned to act on a copy of this order duly authenticated by the Associate.

17. After the order was pronounced the election officer has opened the sealed cover and has declared the results and he will declare the results as per the mode prescribed under the bye-laws.