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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7308 OF 2010

Readymoney Premises Co-op. Society Ltd. .. Petitioner
Vs
Dipti Warehousing Pvt. Ltd. Co & Ors. .. Respondents
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Shri A.S. Desai for the Petitioner.
Ms Sheetal Shah i/by M/s. Mehta & Girdharlal for Respondent No.1.
Shri R.M. Patne, AGP for the State.
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CORAM : A.S.OKA, J.
DATE : 30TH SEPTEMBER, 2010

P.C:

. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the 1st Respondent as well as the learned AGP for the State.

2. The 1st Respondent made an application before the Deputy Registrar of the Co-operative Societies by invoking Section 22(2) of the Maharashtra Co-operative Societies Act, 1960. The contention of the 1st Respondent was that on 15th April, 2009, the 1st Respondent submitted an application for grant of membership of the Petitioner society and there was no reply to the said application within the stipulated period of three

months. It was contended that therefore, the 1st Respondent is entitled to deemed membership. After the contest by the Petitioner, the Deputy Registrar allowed the application made by the 1st Respondent. A Revision Application was preferred by the 1st Respondent against the said order. By the impugned order dated 19th May, 2010, the revision application has been rejected.

3. The learned counsel appearing for the Petitioner submitted that in view of clause (c) of Rule 1 of Rule 24 of the Maharashtra Co-operative Societies Rules, 1961, transfer of shares in favour of the 1st Respondent cannot be effected unless all liabilities of the predecessor-in-title of the 1st Respondent are discharged. He pointed out that an application for issuing recovery certificate was made by the Petitioner against the predecessor-in-title of the 1st Respondent. He pointed out that earlier a recovery certificate was issued under Section 101 of the said Act in favour of the Petitioner in the sum of Rs.1,21,25,400/- and by further order dated 10th October, 2006, the said recovery certificate was purportedly set aside and a fresh recovery certificate in the sum of Rs.8,16,687/- with interest thereon at the rate of 18% per annum was issued. He pointed out that against the said order, the Petitioner has filed a Writ Petition being Writ Petition No.6692 of 2010. He pointed out that in the said Writ Petition, rule has been issued by this Court. He submitted that if the Petitioner succeeds in the Writ Petition, the liability of the predecessor-in-title of the 1st Respondent will be much more than what is granted under the order

dated 10th October, 2006. He, therefore, submitted that in view of Sub-Rule 1(c) of Rule 24 of the said Rules, the authorities below have committed an error by granting deemed membership to the 1st Respondent.

4. Learned counsel appearing for the 1st Respondent pointed out that a Cheque dated 31st August, 2010 representing the amount payable under the recovery certificate issued under Order dated 10th October, 2006 has been already handed over to the Petitioner-Society. She stated that the 1st Respondent has no objection if the said cheque is encashed.

5. I have considered the submissions. Even the impugned order dated 19th May, 2010 notes that the 1st Respondent had offered to pay the amount payable to the Petitioner under the recovery certificate issued against the predecessor-in-title of the 1st Respondent. The Revisional Authority has observed that the parties to the revision application will be bound by the decision in Revision Application No.19 of 2007 which was the Revision Application filed by the Petitioner against the order dated 10th October, 2006 of issuing recovery certificate only in the sum of Rs. 8,16,687/- with interest. The said finding is not challenged by the 1st Respondent. It is, therefore, obvious that the parties hereto will be bound by the order in Writ Petition No. 6692 of 2010 which has been preferred by the Petitioner for challenging the order of dismissal of the said Revision Application No.19 of 2007.

6. There is no dispute that other requirements have been fulfilled by the 1st Respondent. The Petitioner can always encash the cheque dated 31st August, 2010 without prejudice to its rights and contentions in pending Writ Petition No.6692 of 2010.

7. Subject to what is observed above, no case for interference is made out. The Writ Petition is rejected.

(A.S.OKA, J)