

Dispute no. 125/2023

Anil Harihar Jani

Vs

Aum Kiran CHS LTD

---

**ORDER BELOW EXH. 15**

---

**1) Disputant has made present application for striking off defence of opponent.**

**2) Case of disputant in brief is as follows:**

On 27<sup>th</sup> July 2023, opponent/society filed an application for condonation of delay along with written statement. The said written statement of society was verified and affirmed on 27<sup>th</sup> July 2023 by Mr.Jignesh Shah. The said verification was done without producing any authority or resolution. The Hon'ble Court had directed opponent to produce application of condonation of delay to file written statement, in proper format. Also, authority/resolution of society was also to be produced. Thereafter, on 2<sup>nd</sup> August 2023 an order was passed below Exhibit 12.

**3)** As per the said order application was allowed. After the payment of costs of ₹ 750/- to the other side, opponent was to file its written statement as per the provisions laid down in Order VIII of the Code of Civil Procedure. (C.P.C.) But, on 17<sup>th</sup> August 2023, opponent deliberately and intentionally did not comply with the said order. Also, fresh/ rectified written

statement as per the provisions of order VIII of the C.P.C. was not filed by the opponent. Even after repeated directions from the court, opponent did not comply with the aforementioned order.

4) Reasonable amount of time was given to opponent. But opponent failed to avail the same. Hence, on this ground defence of opponent be struck off for non-compliance of the said order. Also advocate appearing in the present dispute is not authorized by the society. On the other hand, Mr. Jignesh Shah is claiming to be secretary of the society. But no authority is given to him by the society. Hence considering these reasons application be allowed and defence of opponent be struck off.

5) **Case of opponent in brief is as follows:**

Opponent/society denied all the contentions of disputant by filing its reply vide Exhibit 16. The present application is not maintainable. It is made only to harass the opponent. On 27<sup>th</sup> July 2023, opponent has filed its written statement. The said statement is affirmed by Mr. Jignesh Shah who is secretary of the opponent-society. Society has authorized him to appear in the present matter on its behalf. Therefore, the written statement/reply is signed by Mr. Jignesh Shah. Hence, there is no necessity to produce any supporting document. Disputant is well aware of the said fact.

**6)** As far as order is concerned. Opponent has paid costs of ₹ 750/- to the disputant on 10<sup>th</sup> August 2023. Accordingly, the written statement of opponent was taken on record. The said written statement is filed as per the provisions laid down in Order VIII of the C.P.C. Hence, no particular objection was pointed out by the court. There is no default in written statement of the opponent. The advocate appearing on behalf of society has submitted his Vakalatnama, on the very 1<sup>st</sup> date of appearance. It shows that present application is made only to harass the opponent. Therefore, it be rejected with cost.

**7)** Heard the argument of learned advocates of disputant and opponent. Perused the documents filed on record. As mentioned above on 2<sup>nd</sup> August 2023 an order was passed below Exhibit 12 and delay condonation application of opponent was allowed. A cost of ₹ 750 was imposed on the opponent. Further opponent was directed to file written statement as per the provisions laid down in Order VIII of C.P.C. on or before next date in the present dispute. The next in the present dispute was 17<sup>th</sup> August 2023. On 17<sup>th</sup> August 2023 opponent complied with of payment of aforementioned costs.

**8)** The disputant submitted that society has not given any authority to Mr. Jignesh Shah who claims himself to be a secretary of the society. Per contra, society submitted that

authority has been given to Mr. Jignesh Shah to appear and represent the society. The disputant also objected to appearance of learned advocate of the society. He submitted that society has not authorized appearance of advocate on record, only Mr. Jignesh Shah has done the same. No resolution or authority letter of society is filed on record.

**9)** It is to be noted that on 3<sup>rd</sup> May 2023 vide Exhibit 8, learned Advocate Prashant Deshmukh and associates appeared in the present matter on behalf of the Society. In the said Vakalatnama, it is mentioned that Mr. Jignesh Shah, the Hon'ble secretary of the society appoint and authorize learned Advocate Prashant Deshmukh and Associates to act, appear and plead for and on behalf of the society. The said Vakalatnama has been accepted by my learned predecessor on 3<sup>rd</sup> May 2023. As pointed out by the disputant, no resolution or copy of authority letter is filed on record by the society. But there is nothing on record to show that disputant had raised objection on the said date only.

**10)** As far as issue of filing of written statement as per the provisions of **Order VIII of the C.P.C.** is concerned. For the same, provisions of **Order VI and VIII of C.P.C.** need to be taken into consideration. When the written statement vide Exhibit 14 is read in the light of aforementioned provisions of

C.P.C. it can be seen that the said written statement is signed by learned advocate of opponent and Mr Jignesh Shah. Mr Jignesh Shah has also verified the written statement as per **Order VI Rule 14 of the C.P.C.** But affidavit as per **Order VI Rule 15(4) of the C.P.C.** is not filed on record by the opponent.

**11)** Hence, considering the aforementioned discussion. It can be seen from the same that at the time of filing of Vakalatnama opponent/society did not file copy of resolution or authority letter in the name of Mr. Jignesh Shah or the learned advocate Prashant Deshmukh and Associates. But as mentioned above, the Vakalatnama filed on behalf of society has been accepted by my learned predecessor. No objection was promptly raised by the disputant as well. On the other hand, even though other aforementioned provisions of Code of Civil Procedure are followed while filing its written statement. Yet, society has failed to file affidavit in support of its written statement as per **Order VI Rule 15(4) of the C.P.C.**

**12)** Admittedly, aforementioned lacunas are certainly there. But as time and again held by the Hon'ble Apex Court that provision of striking off of defence as mentioned in C.P.C. is not applicable to Co-operative Courts. It is settled law that the Courts which are constituted under special Statutes can function within the scope of the powers given to such Courts

under the Act under which they are constituted and they cannot travel beyond such powers.

**13)** On the other hand, as held by the Hon'ble Apex Court technicalities cannot be allowed to imperil the justice. Technicalities will have to be set apart and practical approach will have to be adopted. Hence, considering the aforementioned grounds and reasons, in consonance with the same, I find it fit to pass the following order.

**ORDER:**

- 1) Application is rejected.
- 2) Opponent/society to bring on record a copy of resolution showing approval of appointment of learned Advocate Prashant Deshmukh and Associates to act, appear and plead on its behalf. Also, opponent/society to file a copy of resolution/ authority letter showing that it had given authority to Mr. Jignesh Shah to represent the society.
- 3) Opponent/society to file affidavit in support of written statement vide Exh. 14 as per **Order VI Rule 15(4) of the Code of Civil Procedure.**

**Place: Mumbai**  
**Date: 15/03/2024**

Sd  
**(Prachi N. Gosavi)**  
**Judge, Co-operative Court No.4,**  
**Mumbai**