

CNR NO.: MH MHCO010001472023

Dispute No. 151/2023

Liladhar T.Udyawar

Vs

The Managing Committee Kakad

Kunj C.H.S.L.

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**ORDER BELOW EXH-5:**

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1. The present application is filed for seeking temporary injunction.

2. The present dispute is filed under section 76,77,91 and 96 of the Maharashtra Co-operative Societies Act, (M.C.S. Act) for declaration and perpetual injunction.

3. Case of the disputant in brief is as follows:



The Kakad Kunj Co-operative Housing Society is a registered society under the Maharashtra Co-operative Societies Act. (Hereinafter referred as the **Society**.) Opponent is a managing committee of the said society. Wherein, disputant is a bonafide member of the said society. In the year 2018-2019, disputant was a secretary of the said managing committee. During his tenure, inspection of society's water meter was carried out by the concerned department of Municipal Corporation of Greater Mumbai (M.C.G.M.) They had brought to the notice that the said water meter was non-functional. Accordingly, society was directed to change water meter within the stipulated time period.

4. Hence, disputant with the help of M/s Mahavir Sanitation

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changed the water meter. Thereafter, water usage by society members increased. Hence, there was an escalation in the water bill as well. None of the members took objection to the same. Thereafter, when the opponent took the charge, they immediately changed water meter.

5. Meanwhile, when society was under the control of Administrator, election was called. The disputant and other members had objected to the nomination of a person namely Shri. Pankajroy Shah as he was a defaulter. Despite of the same, administrator allowed Shri. Pankajroy Shah, to contest the election. He won and was appointed as the secretary of society. Only to seek revenge, the opponent in collusion with Shri. Pankajroy Shah tried to recover water bills from disputant for the water consumed by all the society members. Meanwhile, by order dated 28<sup>th</sup> November 2022 of deputy registrar, directed Shri. Pankajroy Shah to resign from the post of secretary. On the other hand, opponent despite Shri. Pankajroy Shah being a defaulter did not initiate recovery proceeding against him.

6. In the SGM dated 15/10/2022 conducted during the tenure of Shri. Pankajroy Shah, resolution was passed against disputant without there being any loss caused. On the other hand, the opponent allocated Rs. 20,0000/- to M/s Mahavir Sanitation. The required quorum for the said SGM was not there. Likewise, a resolution was passed in the AGM held on 11<sup>th</sup> December 2022. Further, as per the resolution dated 5<sup>th</sup> January 2023, a bill was issued to disputant for an estimated recovery

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of loss of Rs.13,43,722/-. Hence, the actions taken by the opponent are illegal. As per the bye-laws, the water department of M.C.G.M. has jurisdiction to deal with issues related to water supply. Lastly, the disputant is a minority in the said society. Therefore, he is being harassed by the opponent. Hence, the present application be allowed.

**7. Case of the opponent in brief is as follows:**



The opponent denied all the allegations of disputant by filing their say vide exh.11. The present dispute is false and frivolous. Hence, it is not tenable. The order passed by learned Deputy Registrar against Shri. Pankajroy Shah was without verifying the records of society. The disputant with a *malafide* intention lodged a complaint against Shri. Pankajroy Shah. The disputant during his tenure as secretary did not initiate any legal proceedings against Shri. Pankajroy Shah. When the disputant was secretary of the society, he alone made an application to the water department of M.C.G.M., for modification in the main water pipeline. Hence notices were issued to the disputant. But no satisfactory answers were given by him.

**8.** Therefore, the matter was kept in the SGM dated 10<sup>th</sup> November 2022. But disputant did not remain present for the same. In the said meeting unanimously, resolution was passed against disputant for misusing powers as a secretary. Disputant had also appointed M/s Mahavir Sanitation for modification in water pipeline without any legal sanctity. The same caused loss to the society. Due to the negligence of

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disputant, society went under the control of an administrator. The disputant has not filed any documentary evidence to challenge the authenticity of resolutions passed in SGM & AGM. The opponent never harassed disputant. In fact, he was appointed as a secretary despite of he being from a minority community. Hence, the present application being a false one be rejected with compensatory costs.

9: Perused the documents filed on record. Heard Shri.V.K. Tiwari, the learned advocate for disputant and Shri. Darshan B.Shah, the learned advocate for opponent. After considering the rival contentions of both the parties following points arose for my determination. Accordingly, I have given my findings on the same. They are as follows:



| S.N. | POINTS FOR DETERMINATION                                                                           | FINDINGS              |
|------|----------------------------------------------------------------------------------------------------|-----------------------|
| 1    | Does the disputant prove that prima facie case lies in his favour?                                 | In partly affirmative |
| 2    | Does the disputant prove that the balance of convenience lies in his favour?                       | In partly affirmative |
| 3    | Does the disputant prove that an irreparable loss will cause to him, if injunction is not granted? | In partly affirmative |
| 4    | What order?                                                                                        | As per final order.   |

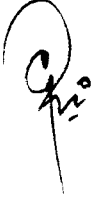
**10. AS TO POINT NOS.1:**

Before proceeding further, it is to be noted that both the parties have admitted that Kakad Kunj Co-operative Housing Society is a registered society under the M.C.S. Act. The opponent is the managing committee

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of the society and disputant was secretary of the same.

**11.** To grant the temporary injunction, the burden is on plaintiff to prove that prima facie case lies in his favour. In the case at hand, it is the contention of disputant that in the year 2018-2019, concerned department of M.C.G.M., carried out inspection of society's water meter. Disputant was the then secretary of the society. They brought it to the notice of society that the said water meter was non-functional. Hence, society was directed to change the water meter within the stipulated time period. Therefore, the disputant with the help of M/s Mahavir Sanitation changed water meter. The said act of the disputant was done in good-faith.



**12.** On the other hand, opponent contended that the said act of disputant was arbitrary and without any sanction. The disputant had made an application to water department of M.C.G.M. for modification in main water pipeline of the society. Disputant appointed M/s Mahavir Sanitation for modification in water pipeline without any legal sanctity. The same caused loss to the society. Hence, disputant is liable to pay for the losses incurred. Therefore, notices were issued to the disputant. But no satisfactory answers were given by him. Hence, the matter was kept in the SGM dated 10<sup>th</sup> November 2022. But the disputant did not remain present for the same. In the said meeting unanimously, resolution was passed against disputant for misusing powers as a

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secretary. As mentioned above, the disputant had challenged the said resolution.



**13.** It is admitted by both the parties that disputant had made an application to M.C.G.M. for modification in main water pipeline of the society. But its authenticity is challenged. The disputant vide exh.13 submitted that the said application was a genuine one. Disputant acted in good faith. Wherein, opponent submitted that the said application was made without there being any sanction. In fact, due to misuse of power, as a secretary by the disputant, members of managing committee resigned from their posts. Despite of this, disputant made an application to the water department of M.C.G.M. for modifications in the main water supply pipeline of the society. Hence, a notice dated 9<sup>th</sup> May 2022 was issued to disputant for seeking his explanation.

**14.** Before proceeding further, it is necessary to peruse the said application dated 25<sup>th</sup> May 2019 made to water department of MCGM. The opponent has filed the same vide exh. 12/B-3. I perused the said application. It bears signature only of disputant being the secretary of society. It is made with regards to the permanent water connection for domestic use. Name of license plumber is shown as Patel T.R.

**15.** The learned advocate for the opponent argued that the said application is made without any prior sanction. The learned advocate of the disputant argued that as per section 77 of the MCS Act and bye law no.159, the said act of the disputant was done in good-faith and best

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interest of the society.

**16.** On the other hand, the letter filed by disputant vide exh. 4/9/1 shows that Chairman: Shri. Lalit Hindocha, Committee members: Shri. Devesh G.Lathia, Shri.Harshad Dodia and Shri.Shakti Darji resigned from their posts because of the alleged misbehavior of disputant. The said letter was addressed to the Deputy Registrar of Co-operative Societies. It is to be noted that the said letter is undated. Secondly, opponent has not clarified whether disputant was communicated about the same.



**17.** Likewise, disputant has not brought on record any document showing that prior sanction before making the application vide exh. 12/B-3 was taken. Also, no oral submission with regards to the same was made except for the fact that the said act of disputant was done in good-faith. For the same, the disputant relied on section 77 of the M.C.S. Act and bye law no.159.

**18.** As mentioned above, it is admitted by both the parties that the modifications/repairing in the water supply pipeline of the society has already been taken place. There is neither any dispute nor allegation that repairing work only of water supply to disputant's flat was done. It is an admitted fact that repairing work for the entire society was done and not only of any particular resident. Hence, the said act prima facie appears to be done in good-faith. On the other hand, repairing and maintenance of water pipelines do fall under bye-law no.159.

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**19.** Moving further, Section 77 of the MCS Act describes acts of societies etc. not to be invalidated by certain defects. Upon perusal of the aforementioned provision, act alleged act of disputant does not fall under section 77. Reason being neither there is any defect subsequently discovered in the organization or constitution of the society was discovered nor in the appointment, election or disqualification of the officer as mentioned in section 77 (1). Further there is no plea that the aforementioned act of disputant was challenged on the ground of cancellation of appointment as secretary. Hence, section 77(2) is also not applicable here.



**20.** More importantly, as per section 77(3) the registrar only can decide whether the act done was in good faith in pursuance of the business of the society. Hence, as argued by the learned advocate of the disputant, in my opinion section 77 of the M.C.S. Act is not applicable to the case at hand. But as mentioned above, prima facie for the lack of proof of any mala-fide intentions and at this interim stage, opponent failed to bring on record supporting documents to prove the same.

**21.** Further, the disputant has filed on record the letter dated 22<sup>nd</sup> February 2020 from Water Works R-Central, MCGM vide exh. 9/8/D1 in reply to the application dated 25<sup>th</sup> march 2019 i.e exh. 12/B-3. I perused the said letter. As per the same, security deposits of Rs. 60,000/- and 30,000/- are mentioned for residential and shops respectively along with other charges. The learned advocate for

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disputant argued that accordingly disputant informed society members about installation of new water meter.

**22.** For the same, disputant relied on letter dated 4<sup>th</sup> April 2019 vide exh. 9/10/F1. I perused the said letter. It has been addressed to all the society members. The said letter bears signature of secretary and the treasurer. It is mentioned therein that new water meter has been installed as the old one was lying dead for a period of more than 8 years.

**23.** It is further argued by the learned advocate of the disputant that none of the society members raised any objection to the same. The disputant and other members had objected to the nomination of Shri. Pankajroy Shah as he was a defaulter. Hence, after taking over the charge, Shri. Pankajroy Shah in collusion with opponent, tried to recover water bills from disputant for the water consumed by all the society members. Hence, the opponent be restrained from recovery the said bill amount from disputant.

**24.** On the other hand, the opponent submitted that for the said arbitrary act of the disputant on 9<sup>th</sup> May 2022 a notice was issued to him. The same is filed vide exh.4/9/I. I perused the aforementioned notice. An explanation regarding modifications in water supply connections was called from the disputant.

**25.** It is important to note here that in the said notice, it is mentioned that as per the society records water charges of society increased/doubled from February 2019 onwards. It is further

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mentioned therein that during the said period disputant was the secretary.

**26.** Before proceeding further, a fact be noted that water bill is issued by M.C.G.M. only and not by any particular person. as far as the role of Shri. Pankajroy Shah is concerned the same cannot be proved at this interim stage. Hence, the same is not being taken into consideration.

**27.** The opponent further submitted that disputant did not give a satisfactory reply to the aforementioned notice. Wherein, disputant relied on his reply to the said notice vide exh.4/9/I. In the said notice, disputant admitted that managing committee did change water meter as it was defunct. Even during the inspection by MCGM, they had pointed out the said fact as well. The concerned authority also warned that if it is not changed within a reasonable time, then the society will have to pay penalty.

**28.** Hence, the said act of the disputant was done in the best interest of the society as per bye- law No. 159. There is no documentary evidence adduced at this interim stage regarding the said inspection carried out by the water department. But it is admitted by both the parties that modification/ repairing of water supply connection/pipeline of society is done.

**29.** As per the submission of opponent, it found the said reply of the disputant unsatisfactory. Hence, the said matter was kept in the S.G.M. dated 10<sup>th</sup> November 2022. But despite of service of notice vide

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exh.12/B-1 of the said meeting, disputant did not remain present for the same. A resolution 'unanimously' was passed against the disputant in the said meeting. Disputant has challenged the said resolution. Therefore, before proceeding further it is necessary to peruse the said resolution.

**30.** In the said resolution vide exh.12/3/B-2, point no.3 is regarding the application made by the disputant dated 25<sup>th</sup> March 2019 vide exh. 12/B-3. It is further mentioned that after the said application was made, water bills previously were approximately of Rs. 46,000/- for three months. It drastically increased up to Rs. 98,000/- and then around Rs. 1,50,000/-. The society members suffered because of the same.

**31.** It is also mentioned in the same that repairing work was given to the M/s Mahavir Sanitation by the disputant without any approval. The members unanimously agreed to assign said work to M/s Mahavir Sanitation and pay fees of Rs. 2,00,000/- as disputant had already assigned the same. Therefore, resolution unanimously was passed to take legal action against the disputant, holding him responsible for the excess water charges borne by the society members. Also, for the recovery of monetary loss including of plumbing charges of Rs. 2,00,000/-.

**32.** The disputant submitted that he had asked society to debar M/s Mahavir Sanitation. But society refused to do so. On the other hand,

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opponent has not produced documentary evidence related to S.G.M. of 10<sup>th</sup> November 2022. Rather disputant has not challenged the same, if there was any.



**33.** The learned advocate of the opponent argued that society had to bear the loss of Rs. 1,30,000/- due to arbitrary act of the disputant. Wherein the learned advocate of the disputant argued that the said act was done in good faith. He further argued that the required quorum for the SGM dated 15<sup>th</sup> October 2022 was not there. Hence, the resolution passed in the same is not legal. But as per the exh.12/3/B-2 i.e. minutes of SGM dated 15<sup>th</sup> October 2022. It is mentioned in the same that there wasn't any quorum till 8P.M. on the given date. Hence, the meeting was adjourned till 8.30P.M. Thereafter, the meeting was held in the presence of chairman and members present. 16 members were present for the said meeting.

**34.** It is to be noted the disputant has not given exact number of members of the society. But the opponent did admit that required quorum was not there in the beginning, for the meeting. Hence, as mentioned above, after the adjournment of 30 minutes, said meeting was conducted. Therefore, the objection of disputant regarding required quorum does not hold any water at this interim stage. A fact to be noted that the disputant has not given any specific reason for his absence from the said meeting.

**35.** As far as validity of the said resolution is concerned, as

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mentioned above modification/ repairing of water supply connection was done for the entire society and for the disputant only. Secondly, the water bills are issued by the water department of the concerned authority. Hence, disputant without any concrete proof cannot be held liable for generation of the same irrespective of amount mentioned therein. At this interim stage no such evidence is adduced by the opponent. Hence, as mentioned above, the act of disputant prima facie appears to be done in good faith. Lastly, no detailed calculation of alleged monetary loss is given by the opponent. Hence, with regards to SGM dated 15<sup>th</sup> October 2022, the disputant has prima facie proved the case lies in his favour.



**36.** Moving forward, as far as resolution passed in AGM held on 11<sup>th</sup> December 2022 is concerned. The learned advocate of the opponent argued that, no supporting documents are brought on record by the disputant. But the opponent submitted in its reply vide exh 11 that resolutions unanimously passed in SGM and AGM were in accordance with law. But vide exh.4/7/G the disputant has filed the draft minutes of AGM held on 11<sup>th</sup> December 2022. I perused the same. As per the agenda no.8. it was unanimously approved that dispute will incur for the loss caused to society due to application made to the water department.

**37.** The disputant by way of present application prayed to keep recovery of alleged estimated loss Rs. 13,43,722/- from him as per the

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resolution dated 5<sup>th</sup> March 2023 in abeyance. Along with the prayer that opponent be restrained from charging interest on the aforementioned amount. It is submitted by disputant that the monthly maintenance bill was raised on 5<sup>th</sup> March 2023 to illegally pay Rs. 13,43,722/-. It was mentioned under the head of 'estimated recovery of loss' as per the resolution dated 5<sup>th</sup> January 2023.

**38.** Disputant has not filed a copy of the said resolution. But a copy of bill demanding Rs. 13,43,722/- is filed on record vide exh.4/8/H. I perused the said copy. As per the same, disputant is charged with Rs. 13,43,722/- under the title of estimated recovery of loss in caption with the resolution dated 5<sup>th</sup> January 2023.

**39.** The opponent submitted that the said amount is charged for the losses borne by society due to the application made by the disputant. to the water department. But the opponent has failed to provide details of recovery amount of Rs. 13,43,722/-. The burden is on the opponent to prove the same, before charging and recovering the said amount from disputant. As mentioned above, disputant alone cannot be charged for water consumption by all the society members. Unless, the opponent proves the fault on the part of disputant. The opponent has not brought on record the same, at least at this interim stage.

**40.** The learned advocate of opponent argued that resolutions passed in SGM and AGM were as per the provisions of law. Wherein, disputant relied on judgments given by the Hon'ble High Courts in the cases of

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*The Venus Co-operative Housing Society and another Vs Dr. J.Y. Detwani and others 2002 BCI 130, Raja Himanshu Dhar Singh Vs Additional Registrar Co-operative Housing Society 1961 DGLS(Alld.) 192 and Anil Bhatia and another Vs Indian Airlines Co-operative Housing Society Ltd and others 2010 DGLS(Del.)*

*3731.* In the judgments cited supra, it is held by the Hon'ble High Courts that general body is a supreme authority. But it cannot pass arbitrary and unreasonable resolutions as it is not above the law.



**41.** Proceeding further. Considered all the above-mentioned reasons and grounds. As mentioned above, repairing/ modification of water supply connection of the society is done after the disputant's application. The disputant has failed to prove whether any prior approval was taken by him. But on the other hand, the intimation given to the society members regarding the said repairing work is also on record. As mentioned above, repairing work of water supply connection is done for the entire society and not only of the flat of disputant.

**42.** On the other hand, opponent has not given the exact details of amount of Rs. 13,43,722/- to be recovered from disputant for the loss caused to the society. Hence, considering the same, the disputant has prima facie proved his case with regards to the resolutions passed in SGM dated 15<sup>th</sup> October 2022 and in AGM dated 11<sup>th</sup> December 2022. Therefore, disputant has also prima facie proved his case as far as the issue of recovery of amount of Rs. 13,43,722/- is concerned.

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**43.** The disputant has also prayed that society be directed to provide quarterly water consumption bill from 2017 till this date. Also, the copies of minutes of managing committee meeting books from January 2022 till this date. Along with the copies of receipts of money paid to M/s Mahavir Sanitation till date and bank statements be provided.



**44.** But the disputant has not made any submissions regarding what steps have been taken by him to receive the same from society. Therefore, in devoid of such submissions, the said prayers regarding documents cannot be taken into consideration at this interim stage. Hence, considering all the above-mentioned grounds and reasons, **I answer point no.1 in partly affirmative.**

**45. AS TO POINT NOS. 2 & 3:**

As both these issues are interlinked, hence, I am deciding them jointly. As far as, point no. 2 is concerned, disputant must satisfy the Court that comparative hardship or inconvenience likely to cause to him is greater than the opponent, if the injunction application is rejected. As mentioned in the above paragraphs the disputant has partly proved that prima facie case lies in his favour. Prima facie the act of repairing of water supply connections by the disputant appears to be done in good faith. Also, for the lack of proof of otherwise at this interim stage. Hence, considering the same, it proves that balance of convenience lies in favour of disputant.

**46.** In relation to point no. 3, the disputant must prove that if

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injunction is not granted an injury will cause to him that is so substantial. The same could never be adequately remedied or atoned for by damages or which possible cannot be repaired. As far as point no.3 is concerned, disputant has proved that prima facie he has acted in good-faith. The disputant alone cannot be held liable for the water consumption by all the society members. Also, the opponent could not prove at this interim stage, the role of disputant in the water bills received from the concerned department.



**47.** As mentioned above, water bills are issues by the concerned water department of MCGM. Therefore, unless proven otherwise, the alleged recovery of water bills cannot alone be done from the disputant. Hence, in my opinion if injunction is not granted an irreparable loss will cause to disputant compared to the opponent. Therefore, considering all these grounds and reasons, I **answer point nos.2 and 3 in partly affirmative.**

**48. AS TO POINT NOS.4:**

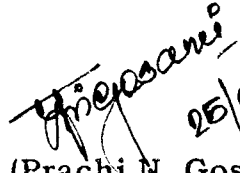
As mentioned above, the disputant has partly proved that prima facie case lies in his favour a condition precedent for granting injunction, followed by other two conditions. Therefore, after taking into consideration, all the above-mentioned grounds, I proceed to pass the following order:

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**ORDER:**

1. Application is partly allowed.
2. The opponent, its agents, servants or any person on its behalf is restrained from implementing and acting upon the resolutions regarding recovery of monetary loss passed in S.G.M. dated 15<sup>th</sup> October 2022 and A.G.M. dated 11<sup>th</sup> December 2022 against and limited to the disputant only, till the final decision of this dispute.
3. The opponent, its agents, servants or any person on its behalf is restrained from recovering amount of Rs. 13,43,722/- (Rupees Thirteen Lakhs Forty Three Thousand Seven Hundred and Twenty Two) along with interest from the disputant, till final disposal of the present dispute.
4. The prayer clauses (e) and (f) are rejected.
5. No order as to costs.

Place: Mumbai  
Date: 25/07/2023

  
(Prachi N. Gosavi)  
Judge, Co-operative Court, Mumbai