

In the Court of Judge, Co-operative Court Thane at Thane  
(Presided over by Smt. S. K. Tonpe, Judge)

**Dispute No. CCT 22/2023**  
**CNR No. MHCO04-000022-2023**

Mr. Ankit Ashok More and others

Disputants

V/S

Ragho Aaba CHS Ltd.

Through its chairman/secretary

Opponent

**Order**  
**(Below application Exh. 13)**

**1.** The disputants have filed present application for direction to the opponent to administer society as per provisions of law. The disputants stated that the disputant is a bonafide member of the opponent society and the said society is registered as per the provisions of MCS Act 1960. The disputant is absolute owner of flat no. B/203 in the opponent society. The disputant want to sale his flat and for the issuance of NOC from opponent society he had written letter to opponent society on 01/12/2023. While receiving the said letter in remark section they have written "*Received letter after clearance of dues we will issue NOC*". All the maintenance charges are clear the amount which is remaining is disputed amount and for the said amount the disputant have already filed the present dispute before this Court. The disputant is ready to deposit the said disputed amount in this Court and or he is ready to deposit any amount ascertain by this Court and this Court may decide the said dispute on merit.

**2.** The disputant further stated that the remark given by the opponent society is not only illegal but also infringement of his

constitutional right. Present dispute and flat given for sale is no concern with each other. However only with intention to harass the disputant, opponent society made such remark and society have no right to restrain the disputant and/or any person to whom the disputant will sale his flat. It is mandatory for Home Loan Procedure to obtain NOC from society to sale flat. Hence for the purpose of home loan, the disputant have written letter to opponent society, in reply to the letter of the disputant the opponent society clearly denied to issue NOC to sale his flat and thereby deprived him from exercising his legitimate right to give his flat on lease/rent/sale. It is appropriate for this Court to direct, the opponent society issue NOC not to deny to permit the disputant to sale his flat and also restrain opponent society from obstructing or causing any other difficulty of the same nature to the possession of purchaser to whom he will sale his flat. If the reliefs prayed in the present application are not granted it will cause grave prejudice and harm will cause which will not compensated in terms of money, on the contrary if the reliefs granted the opponent may not suffer by any way. Hence prayed that pending hearing and final disposal of present dispute this Court be please to direct and declare that opponent society should not restrain applicant/disputant to sale his flat. Pending the hearing and final disposal of the present dispute this Court may be pleased to direct, order and thereby restrain the opponent society from creating any obstruction to the possession of the person to whom disputant may sale his flat and also restrain opponent society from creating any obstruction to entry in society premises to the person to whom disputant may sale his purchaser from enjoying common amenitie which provided to disputant as license/tenant is also nominal

member of society and pending hearing and final disposal of the present dispute this Court be please to direct opponent to administer society as per provisions of law and rules laid down under it.

**3.** The opponent filed say to the present application and submitted that the application at Exh. 5 is yet to be decided. At this stage filing of application at Exh. 13 is not maintainable. Society NOC is not compulsory to sale the flat. There is no any need to pray permission to sale flat from the Court. The disputant has filed dispute against the opponent society. The present dispute is filed by the disputant against society. Till the final hearing of the dispute and counter claim new member can take charge of disputed amount and can be added without prejudice in the matter. If the present application is allowed, it amounts to final relief. Hence the application came to be filed and the matter be proceeded further.

**4.** After hearing both the parties and perusing the documents on record following points arise for my consideration.

| Sr. No. | Points                                              | Findings              |
|---------|-----------------------------------------------------|-----------------------|
| 1       | Whether the application is entitled to be allowed ? | In partly affirmative |
| 2       | What order ?                                        | As per final order    |

### **REASONS**

#### **AS TO POINT NO. 1 AND 2**

**5.** Perused application, proceeding, say, documents on record and after hearing of the parties it appears that the disputant has filed present dispute for declaration that the minutes of the special general meeting dated 25/07/2021 and 20/02/2022 passed

by the opponent society are illegal and disputant is not liable to pay amount of Rs. 61,663/- the payment of property tax, shashti and penalty amount as per letter dated 20/02/2022. The disputant in the present application prayed for direction to the opponent society that opponent should not restrain disputant from not to sale his flat and further direction to the opponent society from creating any obstruction to the possession of the person to whom disputant may sale his flat and also restrain opponent society from creating any obstruction to entry in society premises to the person to whom the disputant may sale his flat and further direction to not obstruct his purchaser from enjoying common amenities which provided to the disputant as licensee/tenant is also nominal member of the society.

**6.** Perusal of the prayers in the application it appears that the prayer (b) and (c) is based on hypothetical ground because it reveals that the flat is not sold out by the disputant till now. It appears that the disputed amount of the disputant is subjudice and responsibility of the disputant to pay that amount will depend on the final judgment of this Court. Disputant is member of the opponent society in respect of flat no. B/203 in the opponent society. Disputant being owner of flat no. B/203, the opponent society cannot restrain the disputant from selling his flat. If the present application is allowed in respect of prayer clause (a) no harm will be caused to the opponent society. But if the application is rejected irreparable loss will be caused to the disputant. Hence considering above discussion I answer point no. 1 in the partly affirmative and in

answer to point no. 2 I proceed to pass the following order.

**Order**

1. Application at Exh. 13 is partly allowed.
2. Pending hearing and final disposal of the present dispute the opponent society is hereby restrained from obstruction to the disputant from selling his flat no. B/203.

Sd/-

Place : Thane  
Date : 08 /04 / 2024

( Smt. S. K. Tonpe )  
Judge  
Co-operative Court, Thane