

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

Dispute No. CCT 97/2021
CNR No. MHCO04-000105-2021

Shri. Vikas Chaudhary

Disputant

V/S

Nalanda CHS Ltd.

Opponent

Order
(Below application Exh. 13)

1. Disputant has filed present application for amendment under Order VI Rule 17 of CPC.

Brief facts of the application are as under : -

2. It is the contention of the disputant that he is a member of the opponent society in respect of flat no. A-22 jointly acquired by the disputant and his mother Nirmal Chaudhary under agreement dated 02/12/1985 from the builder M/s R. M. Developers and registered under the deed of confirmation dated 29/09/1994. As per agreement dated 22/05/1987 disputant purchased one car parking space no. 20 from the builders. Thereafter vide agreement dated 12/07/1990 disputants purchased one stilt car parking space no. 2 from the builder. Thereafter Nirmal Chaudhary have transferred her 50% share in the flat no. A-22 open car parking space no. 20 and stilt car parking space no. 2 under the building in favour of the disputant vide gift deed dated 15/03/2019. On 30/06/2019 disputant along with necessary documents made application to the society for transferring flat no. A-22, parking space no. 20, stilt car parking space no. 2 in the name of the disputant. But the society vide its reply dated 01/10/2019 refused to transfer both parking in

the name of the disputant and society falsely contended that said open car parking space and stilt car parking space are the common area as per the byelaw no. 78 of the society and the same will be allotted to the disputant subject to the availability of the parking space. The opponent society trying to interfere with the peaceful possession of car parking of the disputant. The opponent society to deprive the disputant right in respect of car parking space issued notice dated 10/10/2021 conveying an AGM dated 28/10/2021 and by agenda at serial no. 8 of the said notice that open car parking space no. 20 and the stilt car parking space no. 2 under the building owned by the disputant to Mr. Kumtha and Mr. Jain. In the aforesaid facts and circumstances the disputant have filed present dispute to quash and set aside agenda no. 8 and agenda no. 10 of the notice dated 10/10/2021 conveying the Annual General Meeting of the opponent society dated 24/10/2021 as the same is illegal and contrary to the law and relevant interim relief.

3. The disputant further submitted that in the course of hearing of the interim relief on 23/10/2021 opponent society produced before this Court the drafts minutes of the AGM held on 21/02/2021 whereby the opponent society at serial no. 6 of the minutes of the meeting passed resolution framing and approving car parking rules for the car parking space of the opponent society and further authorizing managing committee of the opponent society to implement the said parking rules. The disputant further submitted that as per byelaw no. 78 (A) and (B) the disputant being the purchaser of the said car parking space no. 20 and stilt car parking space no. 2 has the right to transfer the same to the transferee and the opponent society has no right or claim in respect of parking space

of the disputant. The car parking rules framed by the society are illegal, null and void and not binding upon the disputant. The disputant submitted that copy of the minutes dated 21/02/2021 was not served upon the disputant and the disputant came to know about the car parking rules of the society on 23/10/2021. Therefore it is necessary for the disputant to challenge the resolution no. 6 of the AGM dated 21/02/2021 whereby the car parking rules of the opponent society were framed and approved by the opponent society including the open car parking space no. 20 and stilt car parking space no. 2. Therefore it is necessary to amend the dispute and the interim relief application at Exh. 5 seeking additional prayer clause for challenging the said car parking rules. The prayed amendment is necessary for proper and effective adjudication of the dispute. Therefore disputant prayed to amend dispute and interim relief as per the schedule annexed to the application.

4. The opponent has filed their say at Exh. 16 to the amendment application. The opponent submitted that the said amendment sought by the disputant vide said application is an after thought and it will introduce new cause of action and will change the nature of proceeding. Hence prayed to reject the amendment application.

5. Considering the rival contentions the following issues are raised for my consideration and I have given findings on each of them with reasons as under :-

Sr. No.	Issues	Findings
1	Whether the amendment application is entitled to be allowed ?	In the affirmative

2	What order ?	As per final order
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REASONS

6. Perused application and say filed by the opponent. Heard learned advocate for the disputant and learned advocate for the opponent.

AS TO ISSUE NO. 1

7. Learned Advocate for the disputant argued that the disputant already filed present dispute to set aside agenda no. 8 and agenda no. 10 of the notice dated 10/10/2021 relating to the parking space. On 23/10/2021 the disputant came to know about the car parking rules passed by the society on 21/02/2021 when the opponent produced the minutes of AGM held on 21/02/2021 in the Court. The resolution dated 21/02/2021 is relating to the parking space. It is therefore necessary for the disputant to challenge the said resolution no. 6 of the AGM dated 21/02/2021 whereby the car parking rules of the society were framed including the open car parking space no. 20 and stilt car parking space no. 2 owned by the disputant. The disputant further argued that proposed amendment do not change the nature of the dispute. If the proposed amendment is not allowed multiplicity of the proceeding will be arise. The proposed amendment is necessary to decide the dispute and it will help to adjudicate the matter on merits.

8. The learned advocate for the opponent argued that after thought the disputant has filed the application and it will introduce new cause of action and will change the nature of proceeding. Hence prayed to reject the amendment application.

9. After hearing the parties and perusing the documents on record I find that the present dispute is filed by the disputant to quash and set aside agenda no. 8 and agenda no. 10 of the notice dated 10/10/2021 conveying the AGM of the opponent society dated 24/10/2021 as the same is illegal and contrary to the law and to restrain permanently to opponent society from interfering, obstructing peaceful use, occupation and possession of the disputant in respect of car parking space no. 20 and covered garage no. 2 without following due procedure of law. I find that the reliefs claimed in the dispute and the proposed facts and reliefs prayed in the present application are relating to each other. Disputant wants to challenge resolution dated 21/02/2021 in the present dispute. If the proposed amendment is allowed there will be no prejudice to the opponent as they will be getting an opportunity to file their written statement. At the same time if the proposed amendment is allowed then the nature of the dispute will not change. If the proposed amendment is rejected then it will cause the multiplicity of the proceeding. Moreover whether disputant is entitled for the reliefs sought in the proposed amendment will be decided on merits and at this stage it would not be proper to decide whether the present proposed amendment is tenable in the eyes of law and whether disputant is entitled for the reliefs claimed in the proposed amendment. The proposed amendment is also necessary for the proper adjudication of the dispute. Hence if the amendment is allowed, no prejudice would be caused to the opponent and does not

change the nature of the dispute. As per Order VI Rule 17 and section 153 of Civil Procedure Code and from the above discussion I proceed to pass the following order.

Order

1. The amendment application at Exh. 13 is hereby allowed.
2. The disputant is hereby directed to carry out the amendments prayed in the present application within 14 days from the date of this order
3. After carrying out the amendment, disputant to file the amended copies and supply the copies to the opponent.

Place : Thane
Date : 17 / 11 / 2021

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