

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Mrs. M. A. Sali, Judge)

Dispute No. CCT 127/2018
CNR No. MHCO04-000140-2018

Shri. Devesh Jamnaprasad Vyas

Disputant

V/S

Kohinoor CHS Ltd.

Opponent

Order
(Below application Exh. 9)

1. Present application filed by the opponent and submit that the disputant has filed the present dispute alleging that his father was the member of the society and after his demise he has entitled to be the member of the society. The disputant also relied on the order of DDR and Divisional Joint Registrar in respect of granting membership to the disputant and now the matter is pending before the Hon'ble High Court at Bombay. In the Writ Petition filed by the opponent society challenging the said order and stay has been granted. The said order contemplates that opponent society shall raise maintenance bill and the disputant would pay the same. Thus by virtue of enjoying the right of member, disputant is liable to pay the maintenance charges. The record of the society shows that disputant is in arrears of Rs. 2,03,108/- as on 31/03/2018 in respect of premises in his possession and the opponent is a small society and such huge arrears was financial crunch for carrying day to day affairs. Hence he is directed to pay the arrears of maintenance as on 31/03/2018 before entering into this petition further.

2. The disputant filed reply and submitted that the said application is need to be filed before the appropriate forum. The disputant submits that the opponent society has not accepted him as a member of the society after the demise of his father and inspite of being nominee in respect of the said shop and if the opponent society has any grievances regarding the Hon'ble High Court's order then they can approach the Hon'ble High Court and the opponent society cannot take the advantage of this order in this proceeding.

3. 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 application is entitled to be allowed ?	In the negative
2	What order ?	As per final order

REASONS

AS TO ISSUE NO. 1

4. After hearing the arguments and perusing the documents produced on record I find that the present dispute is filed by the disputant against the opponent society for recovery of an amount of Rs. 4,94,976/- and for permanent injunction in respect of the resolution passed in the meeting dated 06/01/2018, 07/07/2018, 02/10/2005, 11/03/2017. I also find that the disputant has filed Exh. 5 for interim injunction. During the pendancy of this dispute present application is filed by the opponent for the recovery of arrears of maintenance charges of Rs. 2,03,108/- as on 31/03/2018. I find that matter is not been heard on Exh. 5 and the cause of action for filing the present dispute is also different. In the dispute of the

disputant present application is filed by the opponent that direction be given to the disputant to pay the arrears of maintenance charges. But I find that the opponent society can separately take action for recovering these charges but not in the present matter which is filed by the disputant for different cause of action. Hence from the above discussion I proceed to pass the following order.

Order

1. Application at Exh. 9 stands rejected.

Place : Thane
Date : 18 / 04 / 2019

(Mrs. M. A. Sali)
Judge
Co-operative Court, Thane