

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. B. P. Jadhav, Judge)

Dispute No. CCT 211/2023
CNR No. MHCO04-000222-2023

Ambhe Bhumi CHS Ltd.

Disputant

V/S

Mr. Rajesh Sawant

Opponent

Order below application Exh. 5
(Declared on 13/11/2024)

1. The disputants have filed this dispute for recovery and orders against the opponent on the basis of several allegations and averments made in the dispute and prayed as per prayer clause 19(a) to (d).

Along with the dispute the disputants have also filed an interim application at Exh. 5 praying therein that

(a) the opponent be directed to make payment of 50% amount of Rs. 1,31,030/- to the disputant society.

(b) the opponent their servants, agent or any other person claiming through or under them be restrained from creating third party interest in respect of the suit flat during pendency of the dispute.

2. It is the case of the disputants that the disputant is a Co-operative Housing Society registered under the provisions of Maharashtra Co-operative Societies Act 1960. The opponent is the member of the disputant society in respect of flat No. B-202.

3. It is contended that the opponent is enjoying the common facilities and amenities of the society; therefore opponent is liable to pay the society maintenance charges and other charges as fixed by the society in its special general body meeting and annual general body meeting from time to time.

4. It is contended that the society has maintained the book of accounts as per the provisions of approved bye-laws. As per the books of accounts maintained by the society, opponents are liable to

pay disputant an amount of Rs. 1,31,030/- towards society charges upto together with interest at the rate of 21% p.a. till realization of entire amount. The other members of the society are paying society charges regularly, but opponents are not paying the maintenance charges regularly.

5. It is contended that inspite of repeated demands and oral requests, the opponents, failed to make payment to society.

6. It is contended that it is apprehension that the opponent may create third party interest in respect of the suit flat. If the opponent succeed in creating third party interest in respect of the suit property, in that event there will be multiplicity of proceedings and complications in the matter will be increased. Hence disputants constrained to file the dispute alongwith the present interim application Exh.5.

7. In response to the suit summons, the opponent appeared in the present dispute and filed his written statement at Exh. 11 and adopted the same as say to the interim application wherein he denied the entire dispute and contended that the dispute is not maintainable in the form. The disputant has suppressed material facts from this Court.

8. It is contended that the disputant has not filed the duly audited accounts and authentic record as regards the alleged outstanding dues payable by this opponent to the disputant society. The resolution dated 21/01/2023 filed and sought to be relied upon by the disputant society is illegal and as such the alleged resolution itself being illegal.

9. It is contended that the correctness, veracity, authenticity and genuineness of the amounts allegedly due is challenged by the opponent.

10. It is contended that the disputant society was being mismanaged since inception in as much as the managing committee members of the disputant society had neither convened any annual

general meeting, nor had they ever prepared and filed the audited accounts of the disputant society since the year 2004 till 2018, as was required by law and had also not issued either the bills or receipts for the payments recovered by them from the members of the society. It is contended that the society funds and the contributions recovered from its members were being embezzled by the managing committee members of the disputant society for the period from 2004 till 2018.

11. It is contended that on the complaints lodged by Mr. Prabhakar Chavan, the Joint Registrar Co-operative Societies (CIDCO) Navi Mumbai, after due enquiry passed order dated 21/08/2020 wherein it held that the managing committee members of the disputant society is guilty of embezzlement of society funds during the period from 2004 to 2018 and as such held the managing committee members of the society guilty of commission of offences under section 146, 147 and 148(3) of the MCS Act 1960. Accordingly, the criminal case has been filed by the opponent against the said managing committee members of the disputant society, vide OMA No. 501/2020 which is still sub-judice before the Hon'ble JMFC Belapur at Navi Mumbai.

12. It is contended that this opponent being one of the members of the disputant society had taken up proceedings before the Joint Registrar Co-operative Societies (CIDCO) Navi Mumbai against the managing committee members of the disputant society, for mismanagement of the affairs of the society and after hearing the parties and perusing the record the Joint Registrar Co-operative Societies CIDCO has passed an order dated 21/02/2023 under section 75(5) of the MCS Act and has again disqualified the committee members of the disputant society.

13. It is contended that despite the demand by this opponent to supply him the authenticated copies of various records maintained by the disputant society e.g. statement of accounts, details of the

AGMs/SGMs held, bills, receipts etc., the disputant society did not supply the documents to him.

14. It is contended that this opponent was/is always supported by the other members viz. (a) Mr. Akhtar Hussein Hamidun and (b) Mr. Ravikant R. Pawar in his sincere attempts to expose the erring managing committee members of the disputant society and for the very reason this opponent and those other members of the disputant society are being victimized by the disputant society by way of present unwarranted and false proceedings.

15. It is contended that the disputant society has not approached this Court with clean hands and therefore not entitled for any relief at the hands of this Court.

16. It is contended that the present proceedings launched by the society is nothing but a counter-blast to the various criminal cases and court proceedings filed by this opponent against the society for misuse of post, position and powers by the managing committee members of the disputant society. The other members of the disputant society having supported this opponent also being harassed and victimized by the disputant society by filing similar frivolous proceedings against them in this Court only with an intention to harass and pressurize them to withdraw all such proceedings and cases filed against the managing committee members of the disputant society.

17. It is contended that as per the directions given by the Administrator appointed by the Joint Registrar Co-operative Societies CIDCO, this opponent has been regularly and punctually paying the monthly maintenance to the disputant society since January 2019 till this date. This opponent was regularly and punctually paying the monthly maintenance to the disputant society for the period from 2004 till 2018. Ultimately prayed to reject the application with costs.

18. Considering pleadings and perusing the documents on record following points arise for my consideration.

Sr. No.	Points	Findings
1	Whether the disputant is entitled for the relief as claimed in this application ?	Partly in the affirmative
2	What order ?	As per final order

REASONS

AS TO POINT NO. 1 AND 2

19. In the context of this application, I also heard argument of the learned advocate for the disputant and opponent.

20. After careful perusal of the entire proceedings and documents produced on record, it is an admitted fact that the opponent is a member of disputant society. Disputant is a Co-operative Housing Society registered as per the provisions of MCS Act 1960 and rules framed thereunder. It is an admitted fact that the opponent is a owner of flat No. B-202. It is also an admitted fact that the opponent is enjoying the facilities and amenities given by the disputant society.

21. It is seen from the copy of ledger that some of amount of maintenance is not paid by the opponent and some of the amount is paid by the opponent. Admittedly there is dispute in respect of interest and some maintenance amount. To decide the controversy evidence of both the parties needs to be recorded which cannot be possible at the interim stage.

22. So far as the apprehension of the disputant society that the opponent may alienate or transfer the flat to third person and create third party interest in disputed flat is concerned, I am of the view that if opponent is restrained from creating third party interest,

no prejudice as such would be caused to him and interest of both the parties would be protected. Hence interim application needs to be partly allowed. Accordingly I answer point No. 1 as partly in the affirmative.

AS TO POINT NO. 2

23. For the reasons recorded in context of point No.1 I answer point No. 2 as per order below. Hence I proceed to pass the following order.

Order

1. Application at Exh. 5 is partly allowed.
2. The opponent is hereby restrained from creating any third party interest in respect of the suit flat till the disposal of this dispute.

Place : Thane
Date : 13/11/ 2024

Sd/-
(Smt. B. P. Jadhav)
Judge
Co-operative Court, Thane