

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

Dispute No. CCT 241/2017
CNR No. MHCO04-000257-2017

Mr. Sirumalla Venunath

Disputant

V/S

Supreme Park CHS Ltd. and others

Opponents

Order
(Below application exhibit 27)

1. This application is filed by the disputant for interim relief prayed therein.

2. The disputant stated that the disputant has filed the above plaint as against the opponent inter alia for the declaration, injunction, cost and other reliefs. The present application is filed for sole and immediate purpose of seeking the injunction. Opponent no. 1 is a Co-operative Housing Society registered under the MCS Act 1960. The opponent no. 2 is the chairman, opponent no. 3 is the secretary, opponent no. 4 is the treasurer and opponent no. 5 is the committee member of the opponent no. 1 Co-operative Housing Society. Disputant stated that Annual General Meeting was held on 21/08/2016. In the said AGM building repair work was fixed at Rs. 1000/- only per flat. It includes repair of leakages on the exterior, interior and terrace area of the building and flat.

3. The disputant further stated that the disputant sent letter to the opponent for the details as per civil work at society as per special general meeting. The disputant have asked the clarification on cost escalated from Rs. 1000/- per flat to Rs. 16,000/- per flat.

Such a huge difference and the disputant has asked the opponent for the urgency to decide the extra scope of work on special general meeting. The opponent has not given any clarification for escalation of the cost. The disputant had asked the opponent when the AGM has passed for the repair of the building of Rs. 3,48,000/- with each member contribution of Rs. 1000/- as one time payment but opponent has asked for the contribution of repair fund Rs. 16,000/- per flat without giving prior notice and information before conducting SGM in 2017 and the same was forced upon the members immediately without even asking further opinion from any member. The said AGM in 2016 did not passed the audited balance sheet and profit and loss statement for the year 2015-2016 and the said AGM is said to be illegal and bad in law as per section 75, 75(3) and 75(4) of MCS Act and bye-law 95(a), (b), (c), (d), (e) of MCS Act which is mandatory as per the MCS Act to pass the audited balance sheet, profit and loss during the AGM.

4. The disputant stated that he has written a letter on 04/12/2022 to the chairman/secretary/treasurer of the opponent no. 1 that the disputant's name is shown as defaulter in the maintenance bill and his name to be removed from the defaulters list as he is not a defaulter and the outstanding amount is the disputed amount and the matter is "pendete lite" and no interest to be levied on the disputant until the final judgment. The opponents have send reminder letter to the disputant after six years under section 101 of the MCS Act dated 09/01/2023 for the outstanding amount when the matter is "pendete lite" which is ultravirus, malafide intentions, illegal, frivolous and bad in the eyes of law. The opponents have send same xerox of dated 09/01/2023 copy of 101 notice for the second

time to the disputant without any proper explanation. The disputant has sent legal notice on the opponents through the law firm "Arete Juris" on dated 13/01/2023 and asked for the clarification and to withdraw the said notice under section 101 but the opponents have not replied till date. The said notice was served through speed post on dated 13/01/2023 and the said notice was refused by Mrs. Chetana Chitroda ex-chairman and Mr. Kalpesh Lehari ex-secretary has refused to accept the legal notice.

5. The disputant stated that since the said AGM did not pass the audited balance sheet and profit and loss the said proceeding is null and void as per MCS Act and any decision taken is illegal and void. Since the AGM is illegal and void and the said SGM in 2017 conducted is also illegal and void and no ratification was done during the said AGM of 2017. As per bye-law no. 109 of MCS Act unless 6 months clear notice has expired after passing of the previous resolution. The opponent have passed resolution before completion of six months. This is in violation of the MCS Act and bye-laws. The opponent had not sent a reply to the letter dated 17/02/2017 and letters dated 26/02/2017 and on 06/03/2017. Instead of replying to the said letters of the disputant, the opponent had made allegations on disputant stating that since disputant has various criminal records and also litigation pending and he should not interfere in the said repair work of the society. The disputant requested to the opponent to withdraw the interest levied on the building repair fund which is illegal and against the MCS Act. The opponent did not even call for a society meeting of members before levying interest on the members and the same was not even passed during the said AGM of 2016 or SGM of 2017.

6. The disputant stated that the said reminder-1 notice under section 101 of the MCS Act which is on the said society letter head is barred by limitation and no cause of action arises and this is nothing but ulterior motive of the opponents. The disputant is paying regularly society monthly maintenance bills to the opponent no. 1 till date and no outstanding is there and the same may be verified and the opponent be directed to produce the bank statement of J&K Bank and Ledger folio. The disputant submits to this Court that necessary directions be passed to the opponents not to send any letter/communication to the disputant regarding the major repair fund amount or its interest until the final orders/judgment is made by this Court. Hence prayed that pending hearing and final disposal of the dispute, the Court be pleased to direct the opponent no. 1 to 4 by mandatory injunction to hold the payment of interest on the repair fund till further order of this Court. The opponent be stopped not to send any letter/notice/communication until the final hearing.

7. The opponent filed say on the application itself and submitted that the matter is at the stage of evidence, and also the proportion of maintenance has been not challenged therefore whatever the application filed by the disputant is totally irrelevant and be rejected.

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

Sr. No.	Points	Findings
1	Whether there is prima facie case in favour of disputant?	In the negative
2	Whether balance of convenience lies in favour of	In the negative

	the disputant ?	
3	If application is rejected whether the disputant will suffer irreparable loss ?	In the negative
4	What order ?	As per final order

REASONS

AS TO POINT NO. 1 TO 4

9. Perused application, say, proceeding, documents produced on record and after hearing both parties and after perusing written notes of arguments filed by the opponent at Exh. 30 it appears that the disputant have filed present dispute against opponent society for direction to prevent from the charges of escalation of the cost, prevent from collecting deposit on four and two wheeler vehicle, direction for the monthly maintenance equally from all members, not to collect interest on building repair fund, remove the water tap connection from the terrace. The disputant have filed present interim application for direction to the opponent no. 1 to 4 by mandatory injunction to hold the payment of interest on the repair fund till further order of this Court and stop to send letter, notice, communication until the final hearing.

10. Whether the disputant is liable to pay interest on repair fund or not and the resolution passed in the SGBM in 2017 for the contribution of repair fund of Rs. 16,000/- per flat is legal or illegal can be decided during trial after taking evidence of both the parties. Perusal of the proceeding it appears that this Court has framed issues on 12/01/2022 and since then the matter is posted for evidence of the disputant. The present interim application is filed by

the disputant on 28/03/2023 after one year from the matter is posted for evidence. It is well settled that mandatory injunction can be granted in exceptional circumstances. I find that the disputant prayed final relief at interim stage. If the present application is granted it will amount to grant final relief at interim stage. The disputant have filed present interim application at the stage of evidence. The disputant have failed to prove prima facie case, balance of convenience and irreparable loss in his favour. Hence considering above discussion I answer point no. 1 to 3 in the negative and in answer to point no. 4 I pass the following order.

Order

1. Application at Exh. 27 is rejected.

Place : Thane
Date : 02 / 01 / 2024

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