

IN THE COURT OF JUDGE, CO-OPERATIVE COURT
NO.1, PUNE

(PRESIDED OVER BY Smt. A.V. JADHAV)

Dispute No.03/2024

Mr. Sandip Maitra

...Disputant

V/s

**Flora City Co-operative Housing Society
Ltd. & others**

...Opponents

ORDER AT EXH.31

(Passed on 17/12/2024)

1] The present application is filed by opponent nos. 1 to 6, 8, 9, 12, 17 & 18 under Section 94© of the M.C.S.Act 1960 & submitted that the opponent nos. 2 to 6, 8, 9, 12, 17 & 18 do not have any concern with the dispute, just for harassment of committee the dispute has been filed. Moreover, there is no single document to show that opponent nos. 2 to 6, 8, 9, 12, 17 & 18 have any concern with the same.

2] It is further submitted that from bare perusal of the plaint and the documents along with the dispute application the opponent nos. 2 to 6, 8, 9, 12, 17 & 18 have no any concern of relief claimed by the disputant. Therefore, the opponent nos. 2 to 6, 8, 9, 12, 17 & 18 are not necessary to decide the dispute on merits. Hence opponent nos. 2 to 6, 8, 9, 12, 17 & 18 are requested to delete their names from the dispute.

3] Disputant filed reply at Exh.32 and denied the contentions of the application & submitted that the disputant has challenged the resolution no.2 passed under the head any other subject with the permission of the chairman in the managing committee meeting dated 31/10/2023. The said illegal resolution has been passed by all the committee members. Thus the illegal act has been committed by all the committee members of the committee. Therefore the committee members are made party to the present dispute. Opponent no.2 has further implemented the said illegal resolution against the disputant. The committee members i.e. opponent nos. 2 to 18 are responsible for the illegal act of demolishing the side wall of the exclusive parking of the disputant. The committee members being representative of the society acted illegal by demolishing the side wall of the exclusive parking of the disputant & therefore they are the necessary parties to the present dispute.

4] It is further submitted by the disputant that in the prayer clause in prayer no.(iv) the disputant has sought claim against opponent nos.2 to 18 thereby praying the Hon'ble Court to direct the opponent nos. 2 to 18 to reconstruct and restore the side walls of the exclusive parking space owned by the disputant at the cost of opponent nos. 2 to 18. As the disputant has made prayer against opponent nos. 2 to 18 therefore the opponent nos.12 to 18 are necessary and proper parties to the present dispute. Therefore the names of the opponent nos. 2 to 6, 8, 9, 12, 17 & 18 cannot be struck down. Thus the application filed by the opponents is not legal and proper and is required to be rejected with costs.

5] Heard Ld. Adv. Shri. Ajnadkar for disputant & Ld. Adv. Shri. Daulat Hinge for opponent nos. 1 to 6, 8, 9, 12, 17 & 18.

REASONS

6] To decide the application I have gone through under Section 94(3) (c) of the M. C. S. Act, 1960 which is reproduce as under:-

Section 94:- Procedure for settlement of disputes and power of Co-operative Court :-

(3) (c) :- *The Co-operative Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to [the Co-operative Court] , to be just, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before [the Co-operative Court], may be necessary in order [to enable the Co-operative Court] effectually and completely to adjudicate upon and settle all the questions involved in the dispute, be added.*

7] While arguing the application counsel for opponents argued that there is no concern of opponent nos. 2 to 6, 8, 9, 12, 17 & 18 with the dispute. There is no singal document to show their concern with the dispute and only to harass the opponents disputant made party to opponent nos. 2 to 6, 8, 9, 12, 17 & 18. To support his argument he relied upon a case ***Kallappa Anna Patil vs Maharashtra Co-operative Engineering Society Ltd. And another 2001 (1) Mh.L.J.] 59***, in this case the Hon'ble High Court observed that it does not enlarge scope of provisions of Section 91. Section 94 sub-section (3) of Maharashtra Co-operative

Societies Act cannot enlarge the scope of the provisions of section 91 of the act. It would apply in respect of a person whether he may be a member of the society or not but has acquired interest in the property of a person who is a party to the dispute.

The facts of the above case and case in hand are totally different, hence not applicable to the present dispute.

8] To decide the application I have gone through the dispute. Disputant has filed the present dispute for declaration & mandatory injunction & challenge the resolution no.2 passed in the managing committee meeting dated 31/10/2023. According to the disputant the said resolution has been implemented against the disputant.

9] It is the case of the disputant that the committee members of the opponent no.1 society that is opponent no. 2 to 18 are jointly and severally liable for all the acts and omissions detrimental to the interest of the society and the illegal act of demolishing the side walls of the disputant exclusive parking. In the present dispute disputant has sought directions to opponent nos.2 to 18 to reconstruct and restore the side walls of the exclusive parking spaces owned by the disputant at the cost of opponent nos.2 to 18 only, which was illegally demolished by the opponents without any authority.

10] After going through the pleading of the dispute, it appears that the managing committee members of opponent nos.2 to 18 by passing the resolution in the committee meeting dated 31/10/2023 have demolished the side walls of the disputant exclusive parking & disputant has sought the relief against the

society and the managing committee members. Hence opponent nos.2 to18 being the managing committee members are the necessary parties to the present dispute & therefore they cannot be deleted from the dispute as per their request. In view of this I proceed to pass the following order.

ORDER

1. The application is rejected.
2. No order as to cost.

Date: 17/12/2024
Place: Pune

(Smt. A. V. Jadhav)
Judge,
Co-operative Court No.1, Pune.