

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

DISPUTE NO. 06/2021

Dt. 27/07/2021

Mr.Amrpal Singh Ranghar Disputant

VERSUS

**Willows Co-operative Housing
Society Ltd., Balewadi, Pune. Opponent**

Adv. Mr. Pranav P. Pokale for Disputant.

Adv. Mr. P.S.Kulkarni for Opponent.

: Order on Application at Exh.5 :

Brief facts for the application are as under :

- 1) The Disputant is the owner and possessor of the flat No. E-1102 situated in one of the building of Opponent Society. For the reasons and grounds more

particularly stated in the dispute the disputant filed the dispute to declare that there is leakage and seepage of water in his said flat due to drilling of un-appropriated holes in the main slab and other areas by the Opponent Society and the Opponent Society miserably failed to repair said leakage even after collecting money from its members. He asked for further declaration that due to the said water leakage the disputant caused huge damages and sustained financial loss of Rs. 8 lakhs as on 12/12/2020 and for permanent injunction against Opponent to not to proceed with the project of installation of solar panel on the roof terrace of building 'E' and to carry out the repairs of the roof terrace of the building 'E' in full adherence and consonances with the recommendations of the CDC or any other structural engineer whose report could be sought and placed before this Court and to declare that the damages caused to the roof terrace of the building 'E' by Opponent Society and consequential leakage in the flat of disputant is because of the attempt to install the solar panels on the roof terrace and to grant damages

to the tune of Rs. 10 lakhs to the disputant on account of damage caused to the roof terrace and consequential damages to the inner wall, furniture and fixtures due to the leakage of the roof terrace and for direction to Opponent Society to cure the damages to his flat inclusive of fixed furniture, waterproofing of walls, colouring of walls and other sundry repairs cause due to leakage and pay compensation for the same.

2) Alongwith the dispute, the Disputant made present application for temporary injunction to restrain Opponent Society not to proceed with the project of installation of solar panel on the roof terrace of building 'E' of the Opponent Society, to carry out the repair of the roof terrace of the building 'E' in full adherence and consonance with the recommendations of the CDC or any other expert structural engineer whose report could be sought and placed before this Court, for direction to Opponent Society to repair the damages caused to the flat owned by the disputant inclusive of

the fixed furniture, water proofing of the walls, colour work of the walls and other sundry repairs caused due to leakages and to restrain Opponent Society from carrying and executing the project of installation of solar panels upon building 'E' of the Opponent Society.

3) The Opponent Society duly served with summons of the dispute and show cause notice of this application. The Chairman of the Opponent Society appeared with advocate and filed W.S. & reply at Exh. 14 wherein the Opponent alleged that the dispute and present application are not legal, bonafide and proper and hence, are liable to be dismissed/rejected. Opponent Society submitted that it is true that there was a leakage problem in the flat No.E-1102 of the disputant right from the beginning. So far present application is concern, Opponent Society submitted that it had invested huge amount in the solar project for the benefit of entire society and the same has been undertaken as per the resolution of the Society for

which the disputant said to have voted. The above flat of disputant has been repaired by the Opponent Society and this fact is concealed by the disputant. The disputant has purchased an apartment with inherent leakage issue from M/s. Vascon Engineers Ltd.; so the probability of leakages was in the apartment both at the time of purchase by the disputant as well as when the disputant occupied and began to stay over there. Disputant stated to be member of adhoc managing committee of Opponent but he failed to get his grievances addressed and obtain any solution from the said builder in respect of leakage problem in his flat. The Opponent Society further submitted that its subsequent managing committee took up and continued to pursue the issue of leakages of disputants flat amongst others with the said builder and repair work was initiated; water proofing work was done on all the walls where leakages was observed.

4) Opponent Society denied that 30 holes were drilled over the terrace. The disputant and representative of Opponent Society members surveyed the terrace of the building in the month of April-2020 and submitted observations on 04/04/2020 according to which drilling was undertaken in 12 places and four bolts were fixed in the beam. The entire drilling was undertaken as per the design provided by HILTI India – a vendor recommend by TATA Solar Ltd. Opponent Society duly responded to the notice issued by the disputant. Opponent Society's committee has taken the services of market expert in roof water proofing Dr. Fixit prior to installation of solar plant. The Opponent Society has now with the help of a leading Structural Engineering Consultant designed a method of installing the power plant without any drilling. The solar panels will be fixed on the roofs with the help of Chemicals/adhesives and concrete. The Opponent Society claims that this fact has been conveyed to the disputant however, disputant requested for halting installation of solar power plant which may construed

as detrimental to the economics of Opponent Society in general. Opponent further alleged the entire proceeding initiated by disputant is malafide, baseless. The disputant said to be on the committee of Opponent Society for substantial period and a position with leverage with the builder he didn't take adequate action. Thus, this application be rejected with cost.

5) The Ld. advocates of either side argued this application at length. Thus, to decide this application, following points arose for consideration and findings thereon recorded for the reasons given thereunder :

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether disputant has prima facie case?	... No
2) Whether the balance of convenience lies in favour of disputant ?	... No

- 3) Whether disputants will suffer irreparable loss? ... No
- 4) What order & reliefs? ... As per final order.

: **REASONS** :

6) **POINT NO.1** : While ascertaining whether disputant has prima facie case it is necessary to mention here that the own pleadings of the disputant proves the fact that from the inception disputant faced the issue of water leakage in his flat and the same was intimated to the builder of the project. The said builder admittedly tried to resolve the issue of water leakages however couldn't succeed and the issue of water leakage remained to be continued. It is also undisputed fact that the Opponent Society came to be formed in the year-2014 and it was agreed between then adhoc managing committee of Opponent Society and the builder that the structural defects would be fixed by the builder. Therefore, while dealing with the interlocutory

relief in this behalf whereby the disputant asked for temporary injunction is in fact a mandatory injunction to direct the Opponent Society to carry out the repair of the roof terrace of the building-E of the society by adhering and in consonance with the recommendation of the CDC or any structural engineer whose report could be sought and placed before the Court. Thus, such mandatory injunction couldn't be granted in the form of temporary injunction. Moreover, for the sake of arguments if at all it is presumed that the disputant asked for such mandatory injunction then such mandatory injunction can be dealt with and decided if any of the party to the dispute ask for appointment of expert in the field i.e. Structural Engineer, to give report of the defects lies in the roof terrace and adjoining construction of the terrace of Building-E of Opponent Society to decide the cause/reasons for the water leakages into the flat of disputant and if the expert advices to carry out repairs to the roof terrace then only it would be possible to decide the prayer for such mandatory injunction.

7) Besides above, it is significant to make reference to the documents filed by Opponent Society alongwith list at Exh.16 filed alongwith W.S. and reply which reveals the important fact that the Opponent Society by its letter dt. 16/12/2020 placed its order with a firm namely S.G.Sales Corporation for water proofing of the terrace of E-Building of the society for the estimated cost of Rs.1,18,000/- by using Dr.Fixit New Coat with Fiberglass Mesh alongwith other general repairs. The other documents also reveals the fact that the builder namely M/s. Vascon Engineer Ltd. also made repairs through their agency in the month of January-2021 to the buildings of Opponent Society including building-E. The correspondence took place between the parties reveals the fact that the Opponent Society persuaded the issue of leakage in the flat of disputant meticulously and the disputant is and was well aware of the effort taken by the Opponent Society. The communication/correspondence also highlight the

fact that the disputant was member of the managing committee at relevant period and the disputant raised the issue of water leakage only when the Opponent Society planned for installation of solar project in the year-2019. In the circumstances, disputant doesn't have any prima facie case for the relief prayed vide clause (c) of this application.

8) The disputant vide clauses at (b) & (e) asked for temporary injunction in respect of the project of installation of solar project upon E-Building of the Opponent Society. Here it is necessary to note that the Opponent Society must have followed due procedure before deciding and/or taking decision for installation of solar project for the benefit of the members of the society such as passing resolution by its committee and/or the general body. Admittedly, such resolution is not under challenge and/or disputed in present dispute for any reason. Therefore, if temporary injunction prayed in clauses (b) & (e) is granted then it would be

an intervention/interruption in the internal management and affairs of the Opponent Society by superseding the powers of the managing committee or the general body of the Opponent Society without addressing the legality of the very resolution passed for the installation of solar project on the buildings of Opponent Society. The Opponent Society in specific words in its reply, W.S. averred that the panels for the project will be fixed on the concrete blocks which in turn will be fixed on the roofs with the help of chemicals/adhesive and concrete and this has been conveyed to the disputant. As submitted by Opponent Society if the installation of solar project is halted in terms of temporary injunctions prayed by the disputant it would be detrimental to the economics of Opponent Society in general and also against the national policy for encouragement of use of renewable energy by avoiding use of conventional sources of energy. Thus, the disputant also doesn't have prima facie case for the interim reliefs prayed in clause (b) & (d) of this application.

9) The disputant also not entitle for the interim relief requested in clause (d) of this application which is concern with the damages caused to his flat due to the alleged/disputed water leakages from the roof terrace of the flat, because unless it is proved and established that the Opponent Society alone is responsible and liable for said alleged damages and the same been assessed with consultation of expert in the field, the Opponent Society can't be directed in terms of the relief prayed in clause (d). In fact, the relief prayed in this clause is also in the form of mandatory injunction presuming and holding that the Opponent Society alone responsible for the alleged damages in the flat of disputant though the issue of leakage persists from the inception or beginning. In the result, the disputant doesn't have prima facie case for any interim relief asked in this application, so the point answered in negative.

10) **POINT NOS.2 & 3** : Avoiding the repetition of the reasons mentioned and discussed while considering earlier point of prima facie case, for the same it has been held that the balance of convenience doesn't lie in favour of disputant nor he will suffer from irreparable loss, so both the points answered accordingly. Thus, following order :

: **ORDER** :

- Application rejected.
- No order as to costs.

Date : 27/07/2021

Judge
Co-Operative Court No. 1
Pune.