

MHCO120000452023



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE, AT PUNE

Dispute No.38/2023

Dr. Mukund Daji Shashtri

----- Disputant

V/s.

Kumar Presidency Co-operative Housing

Society Ltd., & Others.

----- Opponents

ORDER BELOW EXH.28

(Dictated and pronounced on 22/04/2024)

1] This is an application filed by the disputant under Order 39 Rule 2 and 2 A of the Code Of Civil Procedure, 1908. On the grounds more specifically mentioned in the application Exh-28. Mainly on the ground that, by filing this dispute disputant had challenged the resolution passed in Special General Body Meeting dated 04/02/2023 by which the opponent society has framed and passed new parking policy. The disputant has filed application for temporary injunction at Exh-5 in this dispute which was partly allowed by this court.

2] The opponent society has wrongly interpreted the order passed by this court and send e-mail to its member and mislead the members about the order of this court. This act of opponent is amount to breach of temporary injunction order passed by this court.

3] By notice dated 12/09/2023 the opponent society has called SGM on 28/09/2023 in the agenda there was subject of parking policy review. The act of opponent society to put up the subject of review of the parking policy is directly amounts to withdraw of the right occurred in favour of the disputant as per order passed by this court on Exh-5. Therefore,

disputant had filed this application and prays to send the office bearers of opponent society in Civil Prison. And also, disputant prays for temporary injunction against opponent society from discussing agenda No.3 in the AGM dated 28/09/2023.

4] This application is objected by the opponent society on the grounds more specifically mentioned in its reply which is at Exh-33. Mainly on the ground that, the application is not maintainable. The opponent society is strictly following the order passed by this court on Exh-5 dated 07/08/2023 and the disputant is enjoying the parking place as ordered by this court. The e-mail is the piece of bundle of communication with another member Mr. Ravindra Khanna which is misinterpreted by the disputant. Opponent society has not breached the order passed by this court.

5] Heard Ld. Adv. Shri. Z. A. Pathan for the disputant at length.

6] Heard Ld. Adv. Smt. A. N. Khan for the opponent society at length.

7] The operative part of the order passed by this court at Exh-5 & Exh-11 dated 07/08/2023 reads as; *“Opponent society is restrained by an order of temporary injunction from obstructing the disputant from parking his two cars in open car parking space situated at south west corne (club house compound wall) allotted to the disputant as per allotment letter dated 31/05/2018 by the opponent society, till disposal of this dispute”*.

8] In the case of Murlidhar Datoba Nimanaka & Others V/s. Harish Balkrushna Latane & Others reported in 2003 SCC Online Bom 269. There lordship laid down the ratio that, *The provisions of Civil Procedure Code are not applicable to the proceedings before the Co-operative Court while dealing with the disputes under the Maharashtra Co-operative Societies Act though in relation to such procedure wherever the provisions of law contained in the said Act and the said*

Rules are totally silent, the principles of the Civil Procedure can be made applicable but at the same time, it would not mean that the Co-operative Court will enjoy the powers specifically given to the Civil Court like those of inherent powers, review powers or the powers imposing penalty like striking off the defence, under Order 39, Rule 11 of Civil Procedure Code.

9] The order passed by this court on Exh-5 & Exh-11 dated 07/08/2023 is the order passed under Sec.95 of the M. C. S. Act, 1960 and M. C. S. Act, 1960 does not have the penal provision equivalent to Order 39, Rule 2 A of the C. P. C. hence, the application filed by the disputant under Order 39, Rule 2 A is not maintainable and requires to be rejected.

10] The disputant prays for injunction against the opponent society restraining it from discussing agenda No.3 in the meeting dated 28/09/2023. It is clear that, due to lapse of time this prayer becomes infructuous and the meeting dated 28/09/2023 is already over and now, the injunction order cannot be granted. Accordingly, I proceed to pass following order.

ORDER

1] Application Exh-28 is rejected.

2] Disputant is at liberty to execute the order passed by this court on Exh-5 & Exh-11 dated 07/08/2023 in accordance with law.

3] No order as to cost.

Date:22/04/2024

Place: Pune .

(A.S.Wanve)

Judge,

Co-operative Court No.2,Pune