

MHCO120000512012



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

Dispute No.64/2012

Shri. Sudhir Patwardhan

-----Applicant

In the matter of

Mrs. Rashmi Sayakhedkar & Others

-----Disputants

V/s.

Dattaprasad Co-operative Housing Society Ltd. ----- Opponent

ORDER BELOW EXH.86 & Exh-91

(Dictated and pronounced on 15/09/2023)

1] Exh-86 is the application filed by one Mr. Sudhir Patwardhan who is member of opponent No.1 society for addition to him as party opponent to this dispute on the grounds more specifically mentioned in application Exh-86. Mainly on the ground that, all members of the opponent No.1 society are interested in all assets of the opponent No.1 society and the order/award if any, as prayed by the disputants is passed in favour of the disputants then certainly the interest of all members of opponent society shall get prejudiced therefore, the present applicant wants to take part in this proceeding as party opponent to safe guard his own interest. Therefore, the present applicant is necessary and proper party to this dispute.

2] The disputants in this dispute prayed for a FSI area admeasuring 169 sq.ft. Plus Balcony area of 40 sq.ft. to be given to them free of cost. That, the existing area of the society is the fixed assets of the society. The credits in bank accounts are the current assets of the society. Also, the eligibility to load certain limited areas under Transferable

Development Rights (TDR) during its Redevelopment Program is also a part of the society's asset.

3] That, all members of the opponent society have interest in all the above mentioned property / assets of the society. In other words, the opponent society does not have any property / assets in which interests of all members are not involved.

4] Therefore interests of all members of the opponent society shall get prejudiced if this dispute is decreed in favour of the disputants. Hence, this applicant can be held / regarded to be a necessary party to this dispute.

5] That, on oral assurance / request of the present Management committee to go for clean management of the society, all members of the society decided to give them an opportunity and there by allowed the present Management Committee to get elected / formed un-opposed.

6] However, to the regret of the society members, the Management Committee started acting in the detrimental interest of the society.

7] It is pertinent to note that two members of the Management Committee, Mr. Athalye and Mr. Saykhedkar are the disputants before this court in pending dispute Nos. 15/2014 and 64/2012 and four other Management Committee members also support both of the disputants to get decree in their favour. Hence this applicant has every reason to apprehend that the dispute might not be defended properly and there by may be decreed in favour of the disputant and there by shall cause prejudice to the interests of this applicant together with other society members.

8] It is also pertinent to note that 19 out of 29 members of the society have raised a No Confidence Motion and requested for an immediate termination of the present Management Committee with the Dy. Registrar Co-operative Societies, Pune City No.4, Pune vide letter dated

01/10/2021 (To prove this fact, the applicant is annexing here to a copy of the said letter as “Annexure-A”) However due to Covid Pandemic, no action was initiated by the Dy. Registrar, Co-operative Dept. till date.

9] Many members of the society have supported the contentions of this applicant and have given their confirmation in the letter annexed here to as “Annexure-B”.

10] This is the reason as to why this applicant wants to intervene in this matter even when a Management Committee is present in the dispute to represent the opponent society. In case, if this Court desires, it may conduct an enquiry on this point under provision of M. C. S. Act, 1960.

11] The above facts prove that it is not only an apprehension cropped in the mind of this applicant alone but also proves that a majority of society members have similar apprehension.

12] Therefore, this applicant being a necessary party to this dispute, should be allowed to get himself enjoined as an additional opponent in this dispute in order to safeguard his own interest.

13] It is a settled principle of law that, if a necessary party wants to take part in the dispute proceedings as an additional opponent to safeguard his own interest under Order 1 Rule 10 of the C.P.C., then in such circumstances the principles of Dominus Litus or the bar provided under provision of Order 1 Rule 10 (2) of C.P.C. can not be applied against such necessary party.

14] Hence, the bar under Order 1 Rule 10 (2) of C.P.C. cannot operate against this applicant and therefore, he should be allowed to be enjoined as an additional opponent to safeguard his own interest.

15] This applicant is an Engineering Graduate and has not undergone for any formal education of law. Hence, in his earlier similar application at Exh-72, he had wrongly quoted the same as an application under provision of Order 1 Rule 8 of C.P.C. It was also a typing mistake.

16] However while rejecting the said application in its order dated 11/01/2022, this court held that, "The submission of the intervener cannot be accepted in view of Order 1 Rule 8 of C.P.C" and rejected the same.

17] Hence now this application is being filed on different / correct provision of law (i.e.:- under provision of Order 1 Rule 10 of C.P.C.)

18] Disputants had objected this application by filing their say on the application on the ground that, this applicant has already file same application at Exh-65 & 72 which was rejected by this court and this applicant is filing same application with the view to delay the hearing of this dispute. The opponent No.1 society is competent to protect its interest. The members can approach to the society committee and express their views to the committee. The members of opponent No.1 society including this applicant is not necessary and/or proper party to this dispute. Disputants prays to reject the application.

19] Applicant has filed rejoinder to reply filed by the disputant this rejoinder is at Exh-89. In the rejoinder applicant submitted that, the disputants has made wrong statement in the reply. Similar application was filed by this applicant in this matter under wrong provision as Order 1 Rule 8 of the C.P.C. hence it was rejected. Application Exh-65 appears signature of one Mr. Suresh Patwardhan and not of this applicant. The disputant was Secretary of opponent No.1 society when this applicant was Chairman of the opponent No.1 society.

20] This applicant had also filed application at Exh-91 titled as submissions to bring certain additional facts on record. In this application Exh-91 it is pleaded that, if present Managing Committee is allowed to represent the opponent No.1 society, the dispute might not be defended properly and may lead to a decree in favour of disputants. Along with this application Exh-91 disputant had filed on record the documents in respect of various cases pending between the society and its members.

21] Applicant had also filed the application Exh-92 wherein some more facts are placed on record in respect of filing of the miscellaneous application No.218/2017 before the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune under Section 148 (3) of M.C.S. Act, 1960.

22] Applicant had filed on record the written arguments at Exh-90. I have gone through the arguments.

23] Applicant relied upon the following case laws.

- i] II(2001) BC112 (Madras)
- ii] I(1992) BC236 (P&H)
- iii] II(1994) BC666 (P&H)
- iv] I(1999) BC7 (Karnataka)
- v] II(1991) BC39 (P&H)
- vi] 1995 ISJ (Banking) 359 (P&H)
- vii] Order of the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune in Revision Petition No.82/2018.

I have gone through the above cited case laws.

24] Heard applicant / intervenor in person and Ld. Adv. For the disputant at length.

25] From the pleadings of the dispute application it is seen that, the opponent is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Disputants are member of opponent No.1 society. Disputants prays in the dispute application following reliefs;

a] The opponent society may kindly be mandatorily directed to convey and communicate their formal approval / NOC in writing to the disputants and Pune Municipal Corporation for construction of the room in flat No.3 (20-B) of the disputants as per approved building plan dated 30/04/1991.

b] It may kindly be declared that the opponent society has no legal right claim, use and consume and / or create third party interest in respect of the unconsumed FSI to the extent of 169 sq. ft + 40 sq. ft. balcony, attached with the flat No.4 (20) owned by the disputants.

C] The opponent society may kindly be mandatorily and permanently restrained from disturbing and disputing the legal rights and construction activity of the disputants regarding fourth room on south side of Flat No.4 i.e. new No.20 in B building of the society.

d] Interim relief in terms of prayer (c) may kindly be granted.

26] As per Section 36 of the M.C.S. Act, 1960 the co-operative societies registered under the provisions of the M.C.S. Act, 1960 are body corporate by the name under which it is registered and has power to institute and defend suits and other legal proceedings on its own. As such it is held that, opponent No.1 society is competent to defend this dispute. In the present dispute there is no any relief is claimed against the applicant / intervenor also there is no any relief is claimed against the individual property of applicant / intervenor. The disputant had claim the relief against the society and its common property. Hence, as per section 36 of the M.C.S. Act, 1960 the opponent society is competent to defend the suit and for deciding the dispute finally on merit applicant / intervenor is not necessary or proper party.

27] In the case of ION EXCHANGE FINANCE LTD. v/s M/S THE HAILEYBURIA TEA ESTATES LTD. & ORS Reported in II (2001) BC 112. The intervenor has already acquired the rights in the stock certificate and if, the decree in favour of plaintiff was passed in that suit without the intervenor being party then, the sale of the stock certificate by the impleading party would become invalid and in that event the applicant would be the affected party.

In the case in hand the present intervenor cannot be termed as affected party hence, it is held that, the ratio relied upon by the applicant in the case of Ion Exchange (cited supra) is not helpful to the applicant.

28] In the case of Smt. Vidya Chawala V/s State Of Haryana Reported in I (1992) BC 236. The plaintiff has filed the suit for the declaration and injunction claiming that, she is owner in possession of the property in the dispute and has entered into an agreement to sale with one NirmalJeet Chawala in that suit the Bank has filed the application under Order 1 Rule 10 for impleading the bank has necessary party. On the ground that, the bank has advanced loan for which the house in dispute was mortgaged with the bank.

The fact in the case of Vidya Chawala (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

29] In the case of AnilKumar V/s Gurdial Singh & Ors reported in II (1994) BC 666. In the case defendant No.4 to 6 sold part of land to the vendees and application made for impleading vendees as defendant to the suit and also for amendment in WS.

The fact in the case of Anilkumar (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

30] In the case of M/S NATIONAL CO-OPERATIVE BANK LTD V/S M/S C.V.S. TRADING COMPANY, BANGALORE & ORS, Reported in I (1998) BC 7. The principle for Impleadment of party is laid down that, whether applicant has locus standi to prefer application. The substantial amount of money advanced by Bank against security of property of loanee. Same property proposed for attachment in suit by another creditor of loanee. Interests of Bank jeopardized. Bank has locus standi to be impleaded in suit.

The fact in the case of National Co-operative Bank (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

31] In the case of SMT. SWARAN KAUR & ANR V/S SH. HARPAL SINGH & ORS Reported in II (1991) BC 39. The disputed property is mortgaged with intervenor corporation since earlier to the filing of the suit.

The fact in the case of Smt. Swaran Kaur (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

32] In the case of BANK OF INDIA V/S ----Rice & Genl. Mills Reported in 1995 ISJ (Banking) 359. The mortgaged land sold by the mortgagee to the third person hence, in the suit filed by the bank in respect of the recovery of loan from the mortgaged property the subsequent purchaser are necessary and proper party to the suit.

The fact in the case of Bank of India (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

33] In the case of Gummudi Ramulu V/s. Gadey Srinivasa Rao Reported in 1995 ISJ (Banking) 346. The party was not impleaded on account of mistake made in good faith the party can be impleaded under Order 1A Rule 10 of C.P.C. subject to the question of limitation being decided at the time of disposal of the suit.

The fact in the case of Gummudi Ramulu (cited supra) are totally distinct and different hence, the ratio laid down in this case is not helpful to the applicant.

34] In the case of State Of U.P. & Another V/s. C. O. D. Chheoki Employees Co-operative Society Ltd., & Others reported in (1997) 3 Supreme Court Cases 681. It is held that, ---- *A member of the society*

has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and bye-laws and is subject to its operation. The stream cannot rise higher than the source.

Is squarely applicable to the case in hand and the applicant is not entitle to defend on behalf of the society.

35] In the case of Daman Singh & Others V/s. State of Punjab & Others reported in (1985) 2 Supreme Court Cases 670. It is held that, ----
Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.-----

Is squerly applicable to case in hand.

36] In view of the ratios laid down by their lordship in the case of State of U. P & Anr. (cited supra) and in the case of Daman singh & Ors (cited supra) the guiding principle laid down by Hon'ble Member in Revision Application No.82/2018 is not helpful to the applicant.

37] In view of above discussion, it is held that, the present applicant / intervenor is not necessary or proper party to this dispute. Accordingly, I proceed to pass following order.

ORDER

- 1] Application Exh-86 & 91 is rejected.
- 2] No order as to cost.

Date:15/09/2023
Place: Pune .

(A.S.Wanve)
Judge,
Co-operative Court No.2,Pune

