

**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO. 2
AT PUNE**

DISPUTE NO.101/2021

Date : 22/04/2022

Mr. Amrut Mhaske and Anr.

.... Disputants

VERSUS

Bramha Suncity Co-op Hsg Society Ltd.

.... Opponent

: ORDER BELOW EXH.8 :

1] The third party applicant/intervener filed this application in terms of order I Rule 10 of CPC 1908 seeking leave to intervene in the matter.

2] The third party applicant submitted that they are the members and resident of the Bramha Suncity Co-operative Housing Society Ltd, who is a opponent in the captioned matter. The present dispute is nothing but an ingeniously designed collusive dispute between the disputant and the office bearers of the opponent society under guise of which valid resolutions passed in the recently conducted Annual General Body Meeting dated 03/10/2021 are being challenged on frivolous and flimsy grounds and the third party applicants strongly believe that the office bearers of the opponent society not being desirous of passing the resolutions passed in the said meeting are not likely to be

properly contest the present dispute and may intentionally lapse/fail to represent the interest of the third party applicants.

3] The third party applicants submitted that being a member of the opponent society and also having proposed such resolutions being validly passed in the recently conducted Annual General Body Meeting dated 03/10/2021 and also in their capacities as disputant in the dispute no.106/2021, which is also in a certain manner related to the subject matter of the present dispute, therefore, the third party applicants are not only proper but also necessary party to the present dispute.

4] The third party applicants submitted that being necessary party to the present dispute who shall also be substantially affected by decision passed by this Court. Therefore it is just and necessary that the third party applicants be made as party opponent in the present matter to properly represent the interest of these applicants. The applicants has a strong apprehension in the captioned matter that the disputants and the opponent are in collusion with each other, at instance of the opponent, the disputants have filed the dispute which sham and illusory of the disputant and the opponent and therefore for effective and

proper adjudication of present dispute the third party applicants are necessary to be impleaded as party opponents.

5] The third party applicants submitted that they have also filed a separate dispute being no. 106/2021 against earlier and present chairman and secretary who have intentionally and willfully compromised the interest of several members of the opponent society including the third party applicants, and therefore since these third party applicants proposed a resolution which was passed with super majority in the present AGM dated 03/10/2021, to set aside such illegalities committed by the earlier and present chairman and secretary of the opponent society and therefore collusively the present dispute is filed by the disputant in connivance with the office bearers of the opponent society.

6] The third party applicants submitted that it is necessary and proper party as the outcome of this proceeding and AGM dated 03/10/2021 will directly affect these applicants and other society members at large. Hence, third party applicants prayed that the application may be allowed, This Court be direct the disputant to add the third

party applicants/interveners as opponent nos.2 to 5 in this dispute.

7] Disputants filed say at Exh.12 and denied all the contentions of the application. Disputants submitted that the applicants have concealed the material facts from this Court and trying to mislead and therefore on this ground alone this application is required to be rejected.

8] Disputants submitted that the present dispute is not collusive dispute between the disputant and office bearers of the opponent society. There are invalid resolutions passed in the said AGBM conducted on 03/10/2021. Office bearers of the opponent society being desirous of passing the resolutions passed in the said AGBM. In fact the society is opponent in the present matter and representing the interest of all the members of the society. It is not necessary for each member to come before the court and represent their case personally.

9] Disputants submitted that it is not true to say that the applicants having proposed such resolutions being validly passed in the said AGBM dated 03/10/2021. The dispute no.106/2021 is not related with the subject matter of the present dispute. Third parties are not necessary and proper parties in the present dispute to represent interest of

the members properly. The third parties would not be substantially affected by the decision of the present dispute. For effective and proper adjudication of the present dispute the presence of third party is not necessary.

10] Disputants submitted that the disputant and the opponents are not in collusion with each other. The third parties filed dispute no.106/2021 which is not against the earlier and present chairman and secretary. The copy of such dispute is not filed on record. There is no any intention and will to compromise the interest of several members of the opponent society including third party applicants, therefore, they proposed a resolution which is passed with super majority in the AGBM dated 03/10/2021 to set aside so called illegalities committed by the earlier and present chairman and secretary of the opponent society. Therefore, the present dispute is not filed collusively by the disputant in connivance with the office bearers of the opponent society.

11] Disputants submitted that the outcome of the present proceeding and AGBM dated 03/10/2021 will not directly affect present third party applicants and members at large. No any reason or concrete reason is assigned in the application as to why the third parties are required to be joined as party opponents, when the society is there to take

care of every member. There are about 1277 members in the society and if this practice is upheld then each and every member would approach the Court to implead them as party and there would be chaos. Thus, when society is party in the matter then the presence of each and every member is not at all relevant and necessary. Just to prolong and obstruct the hearing of the present matter the third party application is filed, therefore it deserves to be rejected with heavy costs.

12] Opponent society filed reply at Exh.14 and denied all the contentions of application. Opponent submitted that the application is not maintainable without jurisdiction and the same is required to be straightway rejected with costs.

13] Opponent submitted that in view of section 94(3)(a), it is only upon satisfaction of the co-operative court that a person whether he be a member of society or has not acquired interest in the property of a person who is a party to the dispute it may order that the person can be joined as a party to the dispute. As such the application under O-1 R-10 of CPC is not maintainable.

14] Opponent submitted that there are only two third party applicants who are disputant no.1 and 2 in

dispute no.106/2021 and they have purposely made the third party application in the present dispute which is without disclosing correct facts. In prayer clause 8 (b), the third party applicants are praying for adding them as opponent no.2 to 5 without their being any other two applicants. Neither the dispute no.106/2021 is representative nor this application is in the representative capacity.

15] Opponent submitted that the present dispute is not designed collusive dispute between disputants and office bearers of the opponent society. No office bearers have been made as a party opponent. It is not correct to say that valid resolutions passed in AGM dated 03/10/2021 are being challenged in frivolous matter. As per provisions of the MCS Act,1960 the third party applicants are not entitled to challenge the representation of the society by the present application. The third party applicants have not proposed such resolutions being validly passed in recently conducted AGM dated 03/10/2021.

16] Opponent submitted that the principles of O-1 R-10 CPC, 1908 are not applicable to the present dispute in view of provision of sec.94(3)(a). Even otherwise O-1 R-10 principles cannot override the provisions of sec.94(3)(a).

There is no averments in the entire application that the third party applicants have acquired interest in the property or a subject matter of the dispute. The third party applicants being necessary parties will not be affected by decision passed by this Court. The third party applicants are not necessary for effective and proper adjudication of the present dispute. Opponent denied that the present chairman and secretary have intentionally and willfully compromised the interest of several members of the opponent society.

17] Opponent submitted that it is not correct to say that to avoid the multiplicity of proceedings the intervention should be allowed. There is no such provision even under O-1 R-10 of CPC,1908 in that regard. The Hon'ble High Court has already observed that the provisions of CPC will not in turns apply to the co-operative court if there is separate power which is given u/s.94(3)(a) the co-operative court may not usurp the powers under O-1 R-10 of CPC and there is no such a power given to co-operative court under any provision of the Act or Rules thereunder as laid down in Murlidhar Narmada Vs. Haresh Krishna.

18] Opponent submitted that the application is not supported by affidavit. The third party applicants are not

entitled for any relief either discretionary, legally and equitably. Hence application rejected with costs of Rs.1 Lac.

19] Third party applicants filed documents at Exh.18, 24 and filed case laws at Exh.26.

20] Disputant filed written notes of argument at Exh.27 and case laws at Exh.28.

21] Opponent filed case laws along with the reply.

22] Following points arise to my mind to which I answer the findings thereon as under -

S.No.	Points	Finding
1	Is it necessary to add the third party applicants/interveners as opponents in view of order I Rule 10 of CPC,1908 ? read with Sec.94 (3), (c) of MCS Act, 1960 and Rules 1961.	No
2	What order ?	As per final order

Reasons

As to point no.1 and 2 -

23] The third party applicants filed this application and affidavit to get added in the present dispute as a party opponents. After going through aforesaid submissions, the third party intended to implead themselves into the present

dispute on aforesaid ground. The third party applicant submitted that in the present dispute annual general body meeting dated 03/10/2021 are being challenged on the previous ground and the third party applicant strongly believes that the office bearers of the opponent society are not being desirous of passing the resolutions passed in the said meeting are likely to be properly contest to present dispute and intentionally failed to represent the interest of the third party applicants. The opponent totally denied the contention of the third party applicants. The opponent submitted that the third party applicants have not made an averments in the present application that they have acquired interest in the property or a subject matter of the dispute. However, to support the same the third party applicants have not brought any material fact before the Court which shows that opponent society is not serious to contest the present dispute.

24] The third party applicants submitted that annual general body meeting dated 03/10/2021 is related with the Dispute No.106/2021. Therefore, the third party applicants are proper and necessary party to the present dispute. However, third party applicants have not filed the copy of the Dispute No.106/2021 which shows that how this dispute is related with the present dispute and in what way third

party applicants are proper and necessary party without which this Court cannot be passed effective order. The third party applicants argued that they are the necessary parties in the present dispute who shall be substantially affected by the decision of this Court and they have strong apprehension the present matter disputants and opponents are in collusion with each other. Therefore, disputants have filed the dispute which is sham and illusory. Therefore, for effective and proper adjudication necessary to be impleaded as party opponents. Whereas opponent denied the submission of the third party applicants to avoid the multiplicity of proceeding the third party applicants should be allowed and there is no provision under Order 1 Rule 10 of CPC, 1908 in that regard. And there is a separate provision which is given u/s.94(3) (a) of the MCS Act. The disputant submitted that there is no concrete reason assign in the application as to why the third parties are required to be join as party opponents, as the society is there to represent 1277 members in the society. If this practice is upheld then each and every member would approach to the Court to implead them as party and there would be chaos.

25] Upon going through the submission and record it has been observed that it is the mere apprehension of the third party applicants without any strong evidence on

record. Therefore, mere submission and apprehension has no value in the eye of law.

26] Third party applicants further argued that they have filed separate dispute No. 106/2021 against the earlier and present chairman and secretary of the opponent society who have intentionally and willfully compromised the interest of the several members of the opponent society including the third party applicants. The third party applicants proposed a resolution on 03/10/2021 in AGM which was passed with the super majority to set aside the illegalities committed by the earlier and the present chairman and secretary of the opponent society. Therefore dispute is filed by the disputant in collusion with the office bearers of the opponent society.

27] Opponent strongly denied the contention of the third party applicants that they have proposed the such resolutions which passed in the AGM dated 03/10/2021.

28] However upon going through this submission the third party applicants have not shown the relevancy in regard to the present dispute, and dispute No.106/2021 against the earlier and present chairman and secretary of the opponent society. There is no material against the opponent society which shows that disputants and office

bearers of the opponent society have collusion with each other at this stage. Therefore, in the absence of evidence it is difficult to believe that there is a collusion in between disputants and opponent society.

29] The third party applicants argued that it is necessary to add them as the necessary and proper party for the outcome of the proceedings and AGM dated 03/10/2021 will directly affect these applicants and other society members at large. However, third party applicants failed to prove how the proceeding dated 03/10/2021 will affect directly upon themselves at this stage without material on record. The disputant through present dispute challenging the AGBM 30/09/2021 and 03/10/2021 to be illegal, null and void. And also seeking relief to restrain society to pass any resolution.

30] In view of the above discussion it is necessary to see the provisions of law which are as follows :-

Order 1 Rule 10 of CPC,1908

10. Suit in name of wrong plaintiff - (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the

determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties - The 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 Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Section 94 - Procedure for settlement of dispute and power of co-operative court.

(3) (a) If the co-operative court is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is party to a dispute it may order, that the person who has acquired the interest in the property may joined as a party to the dispute, and any decision that may passed on the reference by the co-operative court shall be binding on the party so joined, in

the same manner as if he were an original party to the dispute.

(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 be joined whether as plaintiff or defendant or whose presence 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.

31] In this context now let's see the authorities relied by the third party applicants as Exh.26.

1) A-1 Co-operative Housing Society Ltd Vs R. Jaikishan and Co.- Hon'ble Bombay High Court - MANU/MH/0725/2004 in this case Hon'ble High Court held "that the provisions of the Acts and Rules do not specifically rule out or preclude co-operative court from granting the amendment of the pleading.

Therefore third party submitted in view of the above citation as they are necessary and proper party so they be

added in the present dispute as a party opponents. And direction be given to the disputant to carry out the amendment accordingly. However disputant denied the said contention and submitted that in view of Sec.94 (3) of MCS Act third party applicants not acquiring any interest in the dispute. Therefore, third party cannot be added in the present dispute. In view of the above citation there is a specific provision u/s 94 (3) of MCS Act, thereafter if the case made out then court can order the disputant for carrying out the amendment in view of the provisions of the CPC, 1908.

2) Challamane Huchha Gowada - Hon'ble Supreme Court of India - MANU/SC/1002/2003 in this authority Hon'ble Supreme Court held that mere non mentioning or wrong mentioning of the provisions in application is not a ground to reject the application. In view of the above citation the third party argued that mere wrong mentioning provision or non mentioning provision of specific law i.e Co-operative Act cannot be rejected. The opponent society argued that there is specific provision in the MCS Act, therefore, the application cannot be considered in view of Order 1 Rule 10 CPC, 1908. However upon going through the provision of CPC Order 1 Rule 10 which resembles with Sec.94 (3) of the MCS Act. The third party applicant filed the application at Exh.23

and submitted that to read his application along with Order 1 Rule 10 and in consonance with Sec.94 (3) of MCS Act. Therefore, considering the above authority the application u/s.23 read with the present application this court is allowed to read the application Order 1 Rule 10, CPC and Sec.94 (3) of MCS Act.

3) *Pruthvirajsinh Nodhubha Jadeja (D) by A L.Rs. Vs. Jayeshkumar Chhakaddas Shah & Ors.- Hon'ble Supreme Court of India - MANU/SC/1380/2019* herein above citation the respondent no.1 filed the application under Order 1 Rule 10 of CPC for impleading him as plaintiff no.2 before trial court. Trial court dismissed application filed by the respondent no.1 for impleadment, holding that he was not necessary/proper party and that fresh cause of action arose in his favour and he could filed separate suit. On appeal against the said order, High Court Set aside the order of trial court and respondent no.1 had been permitted to be added as plaintiff no.2 in the suit.

However in view of the above citation and present case in hand the third party filed application to them in this dispute, it is observed that there is no cause of action at all to the third party to get impleaded in the present dispute. In fact the opponent society includes the third party applicants. Therefore, only apprehension of the third party

applicants that disputants and opponent society has collusion in the dispute, without any evidence, it cannot be considered that there is collusion in between them. Hence, this authority with respect to this case is not relevant to consider.

4) Baluram Vs. P. Chellathangam - Hon'ble Supreme Court of India - MANU/SC/1150/2014 in the above authority Hon'ble Supreme Court has observed that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. A proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely adjudicated upon all matters in dispute in the suit, though he need not a person in favour of or against whom the decree is to be made. If a person is not found to be proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

In view of the above citation the third party applicants claiming that they are necessary and proper party to implead in the present dispute. However, they have not brought anything material which shows that disputant and opponent society are in collusion and thereby affecting the rights of the third party. The disputant has not claimed any

relief against the third party and there is no any separate or independent cause of action to add the third party applicant in the dispute. As the third party applicants are neither necessary party nor proper party therefore, the submission of third party applicants cannot be considered.

32] The disputant filed the case laws at Exh.26 and opponent no.1 also relied upon the same citation.

Murlidhar Dattoba Nimanka & Ors Vs. Harish Balkrishna Latane & Ors. 2003 (6) Bombay CR 153 in which Bombay Hon'ble High Court observed that, *"the only point which arises for consideration in the matter is, whether the co-operative court are governed by the CPC and in case the answer is in negative, then as a corollary, whether in the absence of the provisions similar to the CPC either in the said Act or in the said Rules can be co-operative courts exercise the powers of civil court specified under CPC ? It is well settled that the provisions of law contained in CPC would apply to all the proceedings arising under a special or local act before the civil court, unless specifically excluded by any provision to that effect in the special or local Act, and it is not permissible to exclude the applicability of the provisions of CPC to such proceedings by mere inference on the basis of specific provision in such special or local Act about the applicability of CPC to those proceedings. It is therefore*

necessary to consider the entire scheme of the said Act and Rules before arriving at conclusion on the point for consideration which arises in the matter."

In view of the above citation the application filed under Order 1 Rule 10 of CPC cannot be considered when there is specific provision which provided under MCS Act Sec.94 (3) (a). It is regarding only upon the satisfaction of the co-operative court that a person whether he be a member of a society or has not acquired interest in the property of a person who is party to the dispute it may order that the person can be join as a party to the dispute therefore in presence of these provisions of law the provision of CPC Order 1 Rule 10 cannot be considered. "The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the question involved, that would only make him a necessary witness. It is not merely that he has interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only person which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and question to be settle, therefore there must be question in the action cannot be effectually and completely settled unless he is a

party. Therefore it is necessary that the person must be directly/legally interested in the action in the answer. It means he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. it is difficult to say that rule contemplating joining as a opponent/party a person whose only object to prosecute his own cause of action. Opponent has no direct interest in the subject matter of the litigation and the addition of opponent would result in causing serious prejudice to the opponent society and disputant and the substitution or addition of a new cause of action would only widen the issue which is require to be adjudicated and settled. The joining of the party would embarrass the disputant and issues not germane to the dispute would be required to be raise. The near fact that a fresh litigation can be avoided is no ground or opponent society will not defend properly or contest the suit properly can be avoided is no ground to invoke the power under the rule in such cases.

33] However, aftergoing through pleadings and relief in the dispute the member of society challenging the AGBM against the society. it is well settled that a society is representative of all the members and to protect their interest a society can defend the case. In the instant case there is no prima facie evidence that disputants and

opponents are in collusion with each other file the present dispute. The interveners are the members of society and society can protect the rights of members by defending the dispute. If allowing this application deems that many members might be impleaded subsequently. And the trial may be frustrated and lingered by impleading such party.

34] Moreover, there is no specific relief against the third party applicants. Therefore, third party applicants not at all the necessary party to the present dispute. The Court can pass effective decree even in the absence of third party applicants.

35] Thus, I find no substance in the application. Hence, I answer point no.1 accordingly.

As to Point No.2

36] In view of above discussion and finding given to point no.1, I pass following order.

: ORDER :

1. Application at Exh.8 rejected.
2. No order as to costs.

Date : 22/04/2022
Pune

Judge
Co-operative Court No.2,
Pune