

Balasaheb Kondiba Wagh.

.... Disputant.

V/s.

Shivdatta Co-operative Housing Society, & another.

....Opponents.

ORDER BELOW EXHIBIT – 110.

Read the application and say, heard both the sides, perused the record.

2. This application has been filed for giving additional evidence as well as permission to re-call the disputant witness for the purpose of cross-examination.

3. Upon going through this application it reveals that, opponent no.1 society has been filed written statement. Thereafter, the opponent society had elected Mr. J.N. Tandale, as authorized officer on behalf of the Co-operative society to conduct the election of the society.

4. It is submitted by the opponent society that, the said authorized person has filed the evidence affidavit and the answers given in the cross-examination were against the interest of the society. Therefore, opponent society formed the opinion that Mr. Tandale has not acted upon in the interest of the society.

5. On 23/03/17 Mr. Tandale issued the notice for the general meeting

and accordingly meeting was called on 16/04/17 and he conducted the election of the opponent society and formed the newly elected managing committee for the purpose of administration and function of the said society and accordingly Mr. Tandale, handed over the charge to the elected managing committee members of the society.

6. It is submitted by the opponent no.1 society that since 11/05/17 Mr. Tandale, has no right to participate in any matter of the opponent society even though he filed the evidence close pursis on dated 21/04/17 and through Mr. G. N. Tandale, Adv. S.B. Chabukswar was handling the dispute and filed Exh.106 on behalf of opponent no.1 society and closed the final argument. Which is subsequently realised by the society that evidence affidavit as well as answer given in the cross-examination by the authorized officer Mr. G.N. Tandale was not in the interest of the society. Therefore, he prayed that permission to continue this matter, by giving additional evidence and allow to recall the disputant witnesses for cross-examination.

7. The disputant filed say at Exh.110 and submitted that, the application filed by the opponent no.1 is misleading and devoid of merits not tenable at the time of judgment in the eye of law. The opponent no.1 asking permission for adding the additional evidence for the purpose of to fulfill the lacuna of the earlier evidence given by the opponent society.

8. It is the contention of the disputant that, the election of the society has been conducted and charge of the society handed over to the newly elected managing committee by the authorized officer on or after 11/05/17 and

thereafter, whosoever having objection on behalf of the society to conduct the dispute through the advocate should have intimate to the court as early as after taking charge of the newly elected managing committee. It was a sole duty and responsibility of the opponent no.1 to disclose this fact to the advocate as well as to the court.

9. It is contended that, this matter is now at the stage of judgment then opponent no.1 society came before the court by appointing new advocate to defend the case to recall the witnesses, to lead an additional evidence, which has been sufficiently and thoroughly examined by the previous advocate of the opponent no.1. He further raised the question that if such practice is permitted there would be two sets of evidence and that will make the confusion and it will be embarrassed the trial.

10. It is further contended that, such application is filed on the basis of mere assumptions and presumptions. There is no specific and lawful reasons has been assigned and if this application would allow then the lawful admissions given by the witnesses on behalf of opponent no.1 that will be washout by recalling witnesses. No specific reasons provided in this application about any particular witness which he wants to be lead afresh. Society was aware about the full proceeding of this dispute till today. Therefore, filing this application at belated stage by appointing new advocate for the purpose of prolonging the trial and to harass the disputant. Therefore, he submitted that, to over come the lacuna or to improve the strength of the trial, denoval trial could not be permitted, hence, he prayed to reject this application with heavy cost.

11) Following points arises for my determination and I have recorded my findings thereon for the reasons as under.

<u>POINT</u>	<u>FINDINGS</u>
1) Whether the opponents has shown : reasonable cause for recalling their witnesses and to lead additional evidence ?	No
2) What order ? :	As per final order.

REASONS

POINT NO.1 And 2 :-

12) Admittedly, earlier Adv. S.B. Chabuksawar, for the opponent no.1 filed the evidence close pursis at Exh. 82 dated 21/04/2017 and final argument close pursis at Exh.106 dated 25/06/2018.

13) Say on behalf of the disputant as well as earlier advocate of opponent no.1 i.e. Adv. S.B. Chabukswar filed say at Exh.110. Disputant submitted that, opponent no.1 has filed this application at the stage of judgment. It is the submission of the opponent society that earlier advocate failed to present the case and to conduct the matter in the interest of society. The opponent society has not pointed out what evidences on affidavit was/were against the society given by the earlier advocate. Even opponent society did not indicate on

which point and in what manner opponent no.1 to whom he would like to add the evidences. Further opponent no.1 society did not disclose the reasons what prevented to the opponent society to take this objection at the earliest stage.

14) After perusal of the list of documents filed at Exh.109. i) Notice of special general meeting dated 23/04/2017 from the notice it appears that, authorized officer Shri. J.N. Tandale, has called the meeting on dated 16/04/2017 for the purpose of conducting the election for the year 2017 to 2022 and alongwith this notice Panchanama has filed dated 23/03/2017 regarding notice served on the members of the said society alongwith the signatures of the panch i) Mr. P.Y. Dongre, ii) B. N. Gaikwad, iii) Varsha Desai, vi) Shilpa Dahibhat. 2) Proceeding book dated 02/05/2016. 3) Document showing transfer of charge from earlier committee to the newly elected committee for year 2017-2022 and custody of records. From these documents prima facie it appears that charge was handed over by the Shri. J.N. Tandale (authorized officer) to newly elected authorized officer i) Uttamrao Tayade (President), and ii) Balbhim Gaikwad (Secretary) on dated 11/05/2017.

15) From the record it appears that election of this society has conducted on 02/05/2017 and newly elected managing committee has formed and accordingly charge of this society was handed over from the earlier authorized officer to the newly elected president and secretary on dated 11/05/2017. Since that, this dispute has been handed over to the opponent no.1 society. However, earlier advocate for opponent no.1 filed the evidence close pursis at Exh.82 on dated 21/04/2017 and argument close puris at Exh.106 dated 25/06/2018.

16) It is important to note that the opponent no.1 has not explained the delay for filing of this application. There newly elected committee formed on 11/05/2017 and accordingly charge was taken by this society so naturally it was expected from the newly elected committee, to act within a reasonable time and to inform the court about the same. But since 11/05/2017 till filing of this application at the stage of judgment there is a delay of near about one and half year but they have not mentioned the reasons of the delay.

17) As per the submission of the earlier advocate for the opponent no.1 society is concerned, the newly elected managing committee not filed a single document on record that the earlier advocate had ceased his right to proceed in the matter. There were no instruction or notice (in writing) supplied to him, therefore, he was under impression that society has no objection to continue in this matter till filing argument closed pursis. Therefore, earlier advocate for the opponent no.1 submitted that, as per the instructions of the earlier authorized officer Mr. Tandale, he acted on behalf of the society and society was well aware about court proceeding about this dispute. So he prayed to pass appropriate order. He has not objected to the new V.P. filed by the opponent society without any intimation given to him.

18) Disputant relied on citation *Bagai Construction and Others v/s. Gupta Building Material Store*, reported in *2013 CJ (SC) 141*, wherein it is held that, “applications for adjournments, the reopening and recalling are incurring majors, as per as possible avoided and in-compelling and acceptable reasons, those applications are to be considered. It is further observed in that case the

plaintiff has filed those two applications before the trial court in order to overcome the lacuna in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that, final arguments were heard on number of time and judgment was reserved and only thereafter, in order to improve its case the plaintiff came forward with a such application to avoid the final judgment against the such course is not permissible even with the aid of section 151 CPC”.

19) Upon going through the application in the light of the observation of this citation in the instance case, the dispute is pending at the final stage. Arguments of parties were concluded and meanwhile newly appointed advocate filed V.P. along with this application but there is absolutely nothing mentioned about the reason behind such a delay to file these applications. There is nothing mentioned on what ground opponent has to add the evidence on were the earlier evidence was against the interest of the society. Even opponent has not mentioned any para or an specific evidence filed before this court, where opponent has objection that which went against the society. Therefore, the present citation is applicable in this matter hence, the benefit of order XVII rule 14 read with section 151 of CPC can not be given to the society. The application is moved vague without stating the specific reason as to why the additional evidence is required. Merely stating earlier evidence deposed against the society does not suffice the purpose. Though there is a provision allowing to parties to

lead evidence at any stage, but that does not mean without strong material reasons such application to be entertain as of right. There is delay for filing such application, when society had taken the charge of such dispute years before then what prevented to society to bring the such a fact before this court within a reasonable time. Even otherwise, there is not a single piece of evidence narrated to state that such a evidence is against the interest of the society. It is well settled that, once evidence is recorded, such evidence can not be discarded. Therefore, submission of Ld. Counsel for the opponent can not be taken into consideration. The record shows that ample opportunities given both parties to lead their evidence and both parties have closed their evidence. If such a submission to be entertain then it will lead unending litigation. Therefore, I arrived on point no.1 in negative and to answer the point the no.2, I pass following order.

ORDER

- 1) Application is hereby rejected
- 2) Cost in cause.

Place :- Aurangabad.

Date :- 4th October, 2018.

Sd/-

(**Smt. A. A. Pathan**)

Judge,

Co-operative Court, Aurangabad.