

THE COURT OF JUDICIAL MAGISTRATE (FC),
55TH COURT, VILE PARLE, MUMBAI

C.C. NO.4915/SS/2023

ORDER BELOW EXH.-15

1. The applicant - Dr. Umesh Worlikar has filed this application under section 251 of the Code of Criminal Procedure to discharge or drop him from the matter as he was not office bearer or the administrator of the society of Sheetal Complex CHS Ltd. at the time of commission of offence under section 353-B read with 471 of the Mumbai Municipal Corporation Act 1888 (for short 'the MMC Act'). His name is also not mentioned in the complaint. Despite, the bailable warrant was served upon him as the present Chairman of the society. Hence, he prayed for discharge or drop from the matter under section 251 of the Cr. P. C. The say of ALO as well as accused nos. 1 and 2 were called.
2. The ALO has also not resisted the application by filing his say dated 27/05/2024 given at last of page of the Written Say (Exh.24) filed by accused nos.1 and 2. The ALO has also conceded the fact that the applicant has no concern with the present matter. The responsible persons i.e. accused nos.1 and 2 who were holding the post as Chairman and Secretary at the time of commission of offence have already furnished the bail through which the society is properly represented.
3. However, accused nos. 1 and 2 have resisted the application by filing their Written Say (Exh.24). As per their case, the present applicant as well as two more members i.e. Sandip Hirpara and Ketan Bhimani are the appointed as Board of Administrators (3 Members committee) by the Dy. Registrar R/North Ward by order dated 20/10/2024. It is alleged that their appointment is based upon false and fabricated documents. The Order of Appointment dated

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20/10/2024 is already challenged before the Joint District Registrar wherein the status-quo order was passed thereby restraining them to carry on any further activity or functioning. As such, the applicant as well as two more members are required to be arrayed as accused as they are presently representing the society. Hence, they lastly prayed for rejection of the application.

4. Heard both sides and also gone through the notes of arguments (Exh.27) filed by accused nos. 1 and 2. It is the matter of record, the alleged offence that of not submitting structural audit report within the stipulated period shown to have committed on 19/07/2023 when the society and its members failed to comply with the statutory notice issued under section 353-B of the MMC Act. The appointment of present applicant and other two members were made by the Dy. Registrar by its order dated 30/10/2023 i.e. apparently subsequent to the commission of offence.

5. Although the existing accused nos.1 and 2 have challenged the appointment order of applicant and two other members, the said subject matter is subjudice before the Joint District Registrar as per say of accused nos.1 and 2 itself. Hence, the said appointment cannot be disbelieved at this stage and in the manner as alleged by accused nos.1 and 2.

6. Admittedly, accused nos. 1 and 2 were legally representing the Society as the Chairman and Secretary respectively as on date of the commission of offence. Since, they were in-charge of administration of the society at that relevant time, they will have to be considered as proper representatives of the society to answer the charge leveled against the society for the offence punishable under section 353-B read with 471 of the MMC Act. Hence, I find substance in the submission of applicant that his presence is not required in the matter.

7. Besides, the bailable warrant was issued against the Society without mentioning the name of applicant. There was also no express prayer of ALO to execute warrant on the present applicant. There is also no application on behalf of the ALO to add applicant as representative of the society. As such, the contention of applicant that he has no concern with the commission of offence either in his individual capacity or in the representative capacity of the society seems to be just and proper. The trial can be conducted without his presence. Consequently, the applicant will have to be dropped from the matter for want of prima facie material against him to record the plea to answer the charge. Hence, I pass the following order.

ORDER

- 1] The application (Exh.15) is allowed. The applicant is dropped from the case in hand.
- 2] The case will be proceeded against accused nos. 1 and 2 in their individual capacity as well as the then representative of accused no.3 Society.

Place : Vile Parle, Mumbai
Date :21/01/2025

(U. L. Pathak)
Judicial Magistrate (F.C)
55th Court, Vile Parle, Mumbai.
21/01/2025