

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7888 OF 2015  
WITH  
CIVIL APPLICATION (ST) NO.21157 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Y.S. Jahagirdar, Senior Advocate, i/b Mayuresh S Lagu, Advocate for Petitioner.

Ms. Varsha Palav, Advocate for Respondents.

**CORAM: R.G.KETKAR, J.  
DATE : 13/08/2015**

**PC:**

1. Not on Board. At the request of Mr. Jahagirdar, taken up in production board. Heard Mr. Y. S.Jahagirdar, learned senior counsel for the petitioner and Ms Palav, learned counsel for the respondents.
2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 25.6.2015 passed by the learned Civil Judge Jr. Dn., Dadar and Nagar Haveli, Silvassa, below Exh.1 and 72 in R.C.S. No.20 of 2013. By that order, the

learned trial Judge allowed the application Exh.72 filed by defendant no.15 under section 9 of C.P.C. and Section 8 of the Arbitration and Conciliation Act, 1996 and referred the suit to Arbitrator as per Memorandum of Association of defendant no.1. The learned trial Judge disposed of the suit finally.

3. Mr. Jahagirdar submitted that the petitioner has filed Civil Application for stay on the ground that respondent no.1 herein has issued notice dated 30.7.2015 convening notice of Annual General Meeting on 14.8.2015 at 5 pm. He has therefore prayed for stay of the notice dated 30.7.2105.

4. Ms Palav states that she has instructions to accept and waive service on behalf of the respondents. She assures that within one week from today she will file appearance on behalf of all the respondents. In view thereof, service on the respondents is complete. Ms Palav

submitted that the membership of the trust can be terminated by following procedure laid down in clause 5 of the Memorandum of Association. She submitted that in terms of clause 5(d), respondent no.1 has not received any complaint in writing requesting the Managing Committee to terminate membership of the plaintiff. She further submits that after receipt of the complaint in writing alleging serious misconduct by a member of the Trust, 2/3<sup>rd</sup> members of the Managing Committee have to give proper hearing and thereupon member ceases to be a member of the Trust. She submitted that in view of this position, respondent no.1 is not intending to invoke clause 5(d) of the Memorandum of Association at this stage. Statements made by Ms Palav are recorded.

5. I have considered the rival submissions made by learned counsel appearing for the parties. I have also

perused the material on record. Clause 5 reads thus :

“5. Termination of Membership:-  
The membership of the trust shall stand terminated in any of the following ways:

(a) A member dies.

(b) A member tenders his resignation in writing to the Trust and such resignation is accepted by the Managing Committee.

(c) A member becomes insane.

(d) Criminal offender and moral turpitude. Any member in case of serious misconduct by a member of the Trust at any time in writing may request the Managing Committee to terminate the membership of any member of the Trust and in case 2/3<sup>rd</sup> members of the Managing Committee agree after proper hearing, he shall thereupon cease to be a member of the Trust. “

6. In view of the statement made by Ms Palav, list the Petition for admission on 20.8.2015. It is made clear that at this stage I have not granted any ad-interim order as prayed for in Civil Application.

7. Mr Jahagirdar submitted that as per the impugned order dated 25.6.2015, matter should not be referred to the Chairman of respondent no.1 as per

clause (9) of the Memorandum of Association, as basically the suit is instituted alleging misconduct by Chairman in enlarging membership of respondent no.1. In view thereof, till next date there shall be ad-interim order in terms of prayer clause (b).

(R.G.KETKAR,J.)