

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 696 OF 2014

GOMANTAK BHANDARI SAMAJ, THR. ITS
MEMBERS AND ANR.

... Petitioner

Versus

KUM. PINKI DIPAK NAIK AND 40 ORS.

... Respondent

Mr. N. Sardesai, Senior Advocate with Adv. L. Raghunandan for the
Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 15th September, 2015

Oral Order:

Heard Mr. Sardesai, the learned Senior Counsel for the petitioners.

2. The petitioners are challenging the order dated 20/8/2014 passed by the learned Civil Judge Junior Division, Panaji in Regular Civil Suit No.125/2012/D, by which the applications (Exhibits 31, 36 and 37) filed by the intervenors to implead them as parties to the suit have been allowed.

3. The brief facts are that the respondents no.1 to 5 are the original plaintiffs, who have filed Regular Civil Suit No.125/2012/D which is pending on the file of the learned Civil Judge Junior Divn. at Panaji. The plaintiffs are seeking a declaration that the notice dated 23/9/2012 notifying that only the persons enrolled as members of the

petitioner no.1/Society (original defendant no.1) till 30/6/2012 will be permitted to participate in the ordinary meeting and the elections proceedings, is in excess of jurisdiction in the face of the notice published on 25/7/2012. The plaintiffs consequently claim a declaration that the notice dated 23/9/2012 is null and void. The plaintiffs further claim a declaration that the plaintiffs and other persons whose applications for membership have been accepted till 31/7/2012 are entitled to participate in the ordinary meeting and the election proceedings of the Executive Committee of the petitioner no.1. The suit is filed in a representative capacity. The respondents nos. 27 to 41 filed three separate applications for intervention claiming to be elected as members of the Managing Committee.

4. It appears that one of the grounds on which the intervention was sought was that a notice was published by the Trial Court on 15/6/2013 notifying that any person/parties who may be affected and/or interested in the matter as also who may claim any relief against the plaintiffs in respect of the occurrence referred to therein were required to appear before the Court on 17/7/2013. It was contended that the original plaintiffs who are the members of the petitioner no.1 were aware of the elections of the applicants/proposed intervenors to the Managing Committee of the petitioner no.1. However, they have conveniently avoided to join the applicants to the present suit. It was also contended that there is a possibility of there being collusion between the plaintiffs and the defendants

including the petitioners, who were already joined in the suit.

5. The application was inter alia opposed by the petitioners on the ground that the plaintiffs have not prayed for any relief against the proposed intervenors and as such they cannot be joined.

6. The learned Trial Court by the impugned order has found that the proposed intervenors in the application at Exhibits 31 and 37 have put up rival claims that they are the elected committee members of the petitioner no.1 and as such, they are required to be impleaded in the present suit. The Trial Court has found that in the suit there is no challenge to the elections and as such there is no question of deciding the issue as to who are the properly elected committee members. However, for the reason that at the relevant time the registration of the petitioner no.1 had expired and as such, it was a non-registered association which cannot be said to be a legal entity, which can sue and be sued in its own name, it was found that in respect of an unregistered association all its members are necessary parties. In para 23 of the impugned order the learned Trial Court has found that it is necessary to implead the intervenors as defendants to represent the interest of the petitioner no.1 they being members. In the face of such a finding the application came to be allowed.

7. It is submitted by Mr. Sardesai, the learned Senior Counsel appearing for the petitioner that since after passing of the impugned

order, the registration of the petitioner no.1 has been renewed, w.e.f 25/6/2015, and as such, the ground that at the relevant time the petitioner no.1 was an unregistered body would not survive. It is submitted that once the Trial Court had found that the impleadment would enlarge the scope of the suit causing prejudice to the plaintiffs, the impleadment could not have been allowed.

8. Shri Sardessai, the learned Senior Counsel has also pointed out that the observations particularly in para 23 of the impugned order that the intervenors could represent the interest of the petitioner no.1 would come in the way of the petitioners.

9. I have considered the circumstances and the submissions made. With the assistance of the learned Senior counsel I have perused the impugned order. Admittedly, the suit is filed in a representative capacity in which the Court had published a notice inviting any person interested to join. Indisputably the intervenors are the members of the petitioner no.1/society. It does not appear that the plaintiffs had opposed the impleadment. Thus the challenge to the impleadment as defendants is forthcoming from some of the defendants. I do not find that the fact that the registration of the society has now been renewed would have any consequence on the challenge to the impugned order, when admittedly the intervenors are the members and that the suit is a representative suit in which there was a notice calling all interested persons to join. In my considered

view, the challenge to the impleadment at the instance of the petitioner/defendants cannot be entertained. It is needless to mention that the trial Court has already observed in para 19 that the elections are not subject matter of challenge in the suit. Even so far as the observations in para 23 are concerned, the intervenors being admittedly the members of the society and thus part of the General Body would have appropriate rights in terms of the Constitution/Bye laws/rules and regulations of the Society. Subject to this, no case for interference is made out. The writ petition is accordingly dismissed.

C. V. BHADANG, J.

ap/-