

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2557 OF 2015

Eknath Dhondu Shirsat : Petitioner.
Versus
Parivar Co-operative Housing Society Ltd & ors. : Respondents.

Mr. D S Sapkale for the Petitioner.
Mr. H S Shripad Murthy i/by Mr. Abhishek Patil for the Respondent No.1.
Mr. A R Metkari AGP for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.
DATE : 19th March 2015

P.C.

1 The order dated 20/01/2015 passed by the Divisional Joint Registrar and which is recorded in the Roznama of the said date pertaining to the Revision Application No.77 of 2013 to Revision Application No.165 of 2013 is taken exception to by way of the above Petition.

2 By the said order the Divisional Joint Registrar has re-opened the case in view of the Respondent No.1's prayer which re-opening was sought for consideration of the order passed by this Court and the affidavits which were filed in the two Writ Petitions which were disposed of by a learned Single Judge of this Court (Coram : R V More, J) by order dated 1/9/2014. It is not necessary to mention unnecessary details. Suffice it to say that the Revision Applications pertain to the membership of the Petitioner and similarly situated 89 to 90 persons who have filed the Revision Applications in question. The

said 90 persons are out of about 155 persons who are claiming membership of the Respondent No.1-Society. The dispute about the membership of the said 155 persons has had a chequered history, but for the purpose of the present Petition, it is not necessary to delve into the said aspect. Out of the said 155 persons, the Revision Applications filed by about 64 persons who are identically situated as other 91 persons came to be allowed by the Divisional Joint Registrar by order dated 20/5/2013 which gave rise to filing of two Writ Petitions being Writ Petition No.6176 of 2013 and Writ Petition No.7321 of 2013 which Writ Petitions were filed by the Respondent No.1-Society herein. In the said Writ Petitions, the persons who are claiming membership and whose Revision Applications were allowed i.e. the Respondent Nos.4 to 57 in the said two Writ Petitions had filed an affidavit in which in paragraph 3 it was stated thus :-

“I say that at present the Petitioner-Society has constructed 485 residential flats which are comprised in 4 buildings. I say that Respondent Nos.3 to 57 before passing the impugned order and also after passing of the impugned order have not interfered in the day-to-day affairs of the Petitioner-Society in relation to the 485 flats constructed by the Petitioner-Society. I say that Respondent Nos.3 to 57 have filed S.C.Suit No.4939 of 2003 in the City Civil Court at Bombay against the Petitioner-Society and others challenging the allotment of the said 485 flats to the other members of the society and for other reliefs. I say that without prejudice to the rights and contentions of Respondent Nos.3 to 57 in S.C. Suit No.4939 of 2003, Respondent Nos. 3 to 57 states that they will not interfere with the day-to-day affairs and management of the Petitioner-Society in respect of the said 485 flats constructed by the Petitioner-Society and will also not interfere in the

funds contributed by the said 485 flats holders. I say that the above statement should not come in the way of Respondent Nos.3 to 57 in contesting the S.C.Suit No.4939 of 2003 on its own merits and the statement made herein will not be interpreted to mean that Respondent Nos.3 to 57 have not right, title or interest in respect of the subject matter of S.C.Suit No.4939 of 2003”

In the light of the said statement the learned counsel appearing for the Petitioner-Society made a statement that in the light of the affidavits tendered by the said Respondent Nos.4 to 57 in the said Writ Petitions, the grievance of the Society does not survive. This Court accordingly disposed of the said two Writ Petitions as having turned infructuous.

3 In so far as the Petitioner and similarly situated 89 to 90 persons out of the total 155 persons who are similarly situated are concerned, though the Revision Applications were filed on the same lines as the Revision Applications which were allowed by the Divisional Joint Registrar by the order dated 20/5/2013, the Revision Applications in respect of the Petitioner as well as other 89 to 90 persons were not disposed of . It appears that the said 90 Revision Applications were heard on 5/8/2014 and were closed for orders. At the contemporaneous time the said two Writ Petitions were pending and which came to be disposed of by the order dated 1/9/2014.

4 In view of the developments in the said two Writ Petitions that the

Application was moved by the Respondent No.1-Society for re-opening of the matters which were closed for orders on 5/8/2014, and the said re-opening was sought in view of the order dated 1/9/2014 passed in the said two Writ Petitions as also the affidavit filed by the Respondent Nos.4 to 57 in the said Writ Petitions, as according to the Respondent No.1-Society the order passed by this Court dated 1/9/2014 and the affidavit filed by the Respondent Nos.4 to 57 were required to be taken into consideration whilst adjudicating the Revision Applications which are pending on the file of the Divisional Joint Registrar.

5 The said Application was opposed to on behalf of the applicant on the grounds mentioned in the reply dated 16/12/2014 which reply has been filed by the Petitioner herein.

6 The said Application was allowed by the Divisional Joint Registrar by the order passed which is recorded in the Roznama of the said day.

7 The learned counsel appearing for the Petitioner Shri Sapkale sought to reiterate the stand taken by the Applicant in the said reply. In so far as re-opening of the matter is concerned, the learned counsel for the Petitioner would contend that the Petitioner and the similarly situated 89 to 90 persons are not bound by what has been stated in the affidavit filed on behalf of the

Respondent Nos.4 to 57 in the said two Writ Petitions and the matter has to be adjudicated independently. As indicated herein above, it is post the closing of the Revision Applications for orders on 5/8/2014 that the development in the said two Writ Petitions filed against the persons similarly situated as the Petitioner took place. Since the said development has taken place though after the matter was closed for orders that the Application for re-opening of the Revision Applications was filed. The re-opening sought was a restricted re-opening which can be found in paragraph 4 of the Application, the relevant excerpt from paragraph 4 is reproduced herein under for the sake of ready reference :-

“I say that at present the above referred 90 matters are closed for order on 05.08.2014 but till date no order passed in the said matters but in the mean time as per the order dated 01.09.2014 passed by the Hon'ble High Court and the observation made there under are required to be considered while passing order in all 90 members closed before this Hon'ble Authority for order. I say that all the above referred documents, orders and affidavits are required to be taken into consideration and record while passing order in the above matters. Hence, the Respondent Society is making this application for re-opening of the present matter for further hearing.”

Hence the order passed by the Divisional Joint Registrar re-opening the Revision Applications would be restricted to the said aspect only for the Divisional Joint Registrar to consider the order passed by this Court in the said two Writ Petitions as also the affidavits which were filed on behalf of the

Respondent Nos. 4 to 57 in the said Writ Petitions, the excerpt of which has already been reproduced herein above.

8 In my view, therefore, it is not necessary for this Court to interdict in its writ jurisdiction with the order passed by the Divisional Joint Registrar re-opening the Revision Applications having regard to the restricted re-opening which was sought. Hence by clarifying that the re-opening of the Revision Applications would be restricted to only consideration of the order passed by this Court in the said two Writ Petition as also the affidavits filed on behalf of the Respondent Nos.4 to 57 in the said Writ Petitions, the above Writ Petition is disposed of. Needless to say that the contentions of the Petitioner as well as other similarly situated 89 to 90 persons in respect of the order passed by this Court as well as the affidavits filed on behalf of the Respondent Nos.4 to 57 in the said Writ Petitions are kept open for being agitated before the Revisionary Authority.

[R.M.SAVANT, J]