

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

WRIT PETITION (STAMP) NO.7220 OF 2015

Vithalnagar Co-operative Housing Society

.. Petitioner

Versus

Ghanshyam Malhotra and others

.. Respondents

Shri. N. N. Bhadrashete i/by M/s. B. Amin & Co., for the Petitioner.

Shri. V. D. Govilkar i/by Shri. Manohar Shetty, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 24th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 03.03.2015 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, by which order the Revision Application filed by the Petitioner being Revision Application No.01 of 2015 came to be dismissed and resultantly, the order dated 16.12.2014 passed by the Co-operative Court No.2, Mumbai came to be confirmed.

2. The Petitioner herein is a Co-operative Housing Society who has filed the dispute being Case No.CC/IV/217 of 2008 for recovery of possession of plot No.64 on the termination of the lease of the said plot

granted in favour of the allottee. The Respondent No.1 herein has filed Dispute Application No.378 of 2006 challenging the notice dated 28.03.2006 issued by the society terminating the lease on the ground that the same is illegal. The Respondent No.1 has also challenged the resolution passed by the general body and sought a declaration that the same is null and void. It appears that having regard to the nature of the two disputes which were revolving around the termination of the lease by the Petitioner society, the Respondent No.1 had filed an application for clubbing of the two disputes. The said application was opposed to on behalf of the Petitioner society as the Petitioner society at the said time was of the view that the said dispute would be tried separately. The said application came to be rejected by the Trial Court. Both the disputes have been expedited in so far as the dispute filed by the Respondent No.1 herein is concerned, the same is expedited on account of the order passed by this Court. In so far as the dispute being Case No.CC/IV/217 of 2008 filed by the Petitioner society is concerned, the same has been expedited by the Co-operative Appellate Court when the matter had reached the Co-operative Appellate Court against an order passed by the Co-operative Court. The instant application is filed for clubbing of the said two disputes i.e. dispute filed by the Petitioner society and the dispute filed by the Respondent No.1. The Co-operative Court has for the reasons mentioned

in the order dated 16.12.2014 has rejected the said application. The gist of the reasoning of the Co-operative Court is that it would not be practicable to record common evidence as the challenge in both the disputes are different. The matter was carried in Revision by the Petitioner society by filing Revision Application No.01 of 2015. The Co-operative Appellate Court though came to a conclusion that there are some common issues involved, however did not deem it appropriate to interfere with the order passed by the Co-operative Court. The Co-operative Appellate Court observed that though the points in issue in both the disputes are similar to some extent and since the cause of action for both the disputes are different, a joint trial is not feasible. The Courts below having found that it would not be proper to club the two disputes for being heard together. This Court in its Writ Jurisdiction does not deem it appropriate to interfere with the said finding of the Courts below on the said aspect. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]