

WRIT PETITION NO.4183 OF 2014

Mr. Farhan Dubash with Mr. Ajay Panicker i/b Ajay Law Associates for the Petitioner.
Ms. Sheetal Gaud for the Respondent No.4.
Mr. Sean Wassoodew with Mr. Rupesh Mandhane with Nirav Parmar for Respondent Nos.1 and 2.

DATED : 21ST OCTOBER, 2015

1. By the present petition, the petitioner who are stock brokers registered with the Bombay Stock Exchange seek to challenge the order dated 13th February, 2014 passed by the Divisional Joint Registrar of the Co-operative Society in Revision Application No.409 of 2013 filed under section 154 of the Maharashtra Co-operative Societies Act, 1960 (for sake of convenience “said Act”). The revision application was filed challenging the original order dated 21st March, 2013 whereby deemed membership was granted to respondent nos.1 and 2 under the provisions

of section 23(2) of the said Act. The petitioner claims to be aggrieved by the said orders by virtue of the fact that respondent nos.1 and 2 had purchased the flat in question in the building of respondent no.3 society under an agreement for sale dated 26th April, 2012 after the petitioner had intimated the said respondent nos.1 and 2 of their monetary claim against respondent no.3, who was the vendor. According to the petitioner once such intimation was given, the respondent nos.1 and 2 were put to notice of the claim that the petitioner had against their vendor and ought not to have proceeded with the transaction.

2. Mr. Dubash, learned counsel appearing on behalf of the petitioner submits that the petitioner was unaware of the progress made in the proposed transaction and that they had adopted legal proceedings against respondent no.3 by filing summary suit bearing No.994 of 2011 before the City Civil Court at Ahmedabad in which they secured an injunction on 9th July 2012 whereby the defendant therein, namely, respondent no.3 in present petition was restrained from selling, transferring, alienating, creating third party rights etc. in the suit flat pending disposal of the suit. The order of injunction was granted on 9th July 2012 by which time unknown to the petitioner the flat appears to have been transferred vide agreement dated 26th April, 2012. According to the petitioners, however, the fact that respondent nos.1 and 2 were

aware of the claim, the sale is questionable. Furthermore, the sale is sought to be assailed on the basis that the agreement for sale dated 26th April, 2012 was executed on the strength of no objection certificate said to have been issued by the society. It is submitted that no valid objection certificate was issued by the society but it was a fabricated document. The Secretary of the society has issued no objection certificate without any authorisation of the Managing Committee. Today, it is not in dispute that the claim of the petitioner is only a monetary claim. They do not claim any right by way of mortgage or charge or lien.

3. On behalf of the respondent nos.1 and 2 Mr. Wassoodew points out that respondent nos.1 and 2 upon learning of the summary suit at Ahmedabad made an application for intervention which was resisted by the present petitioners. Against that order the respondent nos.1 and 2 approached the High Court of Gujarat by filing an Appeal from Order No.113 of 2015. The said Appeal from Order came to be disposed of by the order dated 12th August, 2015 after hearing the petitioners. The petitioners at that stage was put to notice of the fact that the property was sold on 26th April, 2012 i.e. prior to the date of injunction, yet the order records that the petitioners counsel took up a stand that there was no injunction operated against defendant nos.2 and 3 i.e. respondent

nos.1 and 2 and that in any case the injunction granted does not preclude or operate against respondent nos.1 and 2 in any manner. Thus, the petitioners have conceded before the High Court of Gujarat that injunction does not in any manner operate against respondent nos.1 and 2. In this view of the matter it is difficult to appreciate the petitioners' contention that the sale can be assailed at this belated stage. Equally, it is difficult to appreciate the basis on which the petitioner seeks to oppose the membership granted to defendant nos.1 and 2. At the best defendant nos.1 and 2 have money claim against respondent nos.3 which they are pursuing. In the circumstances I find nothing perverse or arbitrary in the impugned order. I therefore pass the following order :

The writ petition is dismissed. There will be no order as to the costs.

(A.K.MENON, J.)