

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

WRIT PETITION STAMP NO.12107 OF 2015

Mrs. Vimala Jain and ors. : Petitioners
versus
Goregaon Nav Nirmata CHS Ltd and ors. : Respondents.

Mr. Nagendra S Dube for the Petitioners.
Mr. B R Zaveri for the Respondent Nos.1, 2 and 10

CORAM : R. M. SAVANT, J.
DATE : 2nd July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 9/4/2015 passed by the learned Judge, IIIrd Co-operative Court, Mumbai, by which order the application (Exhibit 21) for framing of preliminary issue came to be allowed and a preliminary issue to the following effect came to be framed :-

“Whether this Court has jurisdiction to try, entertain and decide the present dispute u/s 91 of M.C.s. Act 1960?”

The said order is challenged on the ground that a similar application (Exhibit 15) filed earlier was decided by the Co-operative Court, and the Co-operative Court has ruled by the order dated 18/10/2012 that it had the jurisdiction to try and entertain the Dispute. The impugned order has been passed in the application filed by the Respondent No.2 in the Dispute.

2 The learned counsel appearing on behalf of the Respondent Nos.1, 2 and 10 Shri Zaveri has tendered an affidavit of the Respondent No.2 in the Dispute Shri Mukesh Dilipbhai Shah. Paragraph No.3 of the said affidavit reads thus :-

“I state that matter was listed before this Hon'ble Court on 29.6.2015 and during the course of oral submission my Advocate submitted that the Respondent No.2 i.e. myself would not press the Exhibit-21 i.e. Application for framing preliminary issue dated 23.6.2014 and that the Respondents intend to challenge the order passed by the Hon'ble Co-operative Court dated 18.10.2012 below Exhibit-15 (or initiate any other remedy available under the law) and this Hon'ble Court may grant a liberty to decide the appeal, if it is preferred, in accordance with the law.”

In view of what has been stated in the said affidavit viz that the Respondent No.2 would not press the application (Exhibit 21), the said application would accordingly stand withdrawn. In view thereof there is no warrant to consider the impugned order dated 9/4/2015 on merits, which to accordingly stand set aside. Since the Respondent Nos. 1, 2 and 10 intend to challenge the order dated 18/10/2012 passed on the application (Exhibit 15) by the Co-operative Court, if any such challenge is raised by the Respondent No.2, needless to state that the same would be decided on its own merits and in accordance with law. It is clarified that the instant order is not an impediment for the Co-operative Court to proceed with the Dispute in question. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]