

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4682 OF 2015

Sulochana V.Puthran	...	Petitioner
Vs.		
Adil L.Bhure and others	...	Respondents

**ALONG WITH
WRIT PETITION NO. 4683 OF 2015**

Achutha T.Shetty	..	Petitioner
Vs.		
Uttamkumar B.Desai and others	..	Respondents

**ALONG WITH
WRIT PETITION NO. 4684 OF 2015**

Mrs.Yashoda J.Shetty and others	..	Petitioners
Vs.		
D.Kasturi Rangan and others	..	Respondents

**ALONG WITH
WRIT PETITION NO. 4685 OF 2015**

Sunder Adka	..	Petitioner
Vs.		
Hariappa Athu Kotian and others	..	Respondents

**ALONG WITH
WRIT PETITION NO. 4686 OF 2015**

Mr.Subhash Shetty	..	Petitioner
Vs.		
Dr.Manoj Mangalchand Khivsare and others	..	Respondents

**ALONG WITH
WRIT PETITION NO. 4687 OF 2015**

Atul A.Raje	..	Petitioner
Vs.		
Smt.Smita M.Kondurkar and others	..	Respondents

**ALONG WITH
WRIT PETITION NO. 4688 OF 2015**

Manohar S.Shetty .. Petitioner
Vs.
Irfan Faquih and others .. Respondents

**ALONG WITH
WRIT PETITION NO. 4689 OF 2015**

Tilak V.Amin .. Petitioner
Vs.
Samie A.Kungle and others .. Respondents

**ALONG WITH
WRIT PETITION NO. 4690 OF 2015**

Yashoda J.Shetty .. Petitioner
Vs.
Chandrakant R.Ajgaonkar and others .. Respondents

**ALONG WITH
WRIT PETITION NO. 4691 OF 2015**

Seema Natrajan .. Petitioner
Vs.
Keshav S.Bharadwaj and others .. Respondents

Ms.Nutan S.Moily, Advocate for Petitioners.
Mr.P.G.Lad, Advocate for Respondent – M/s.Vyas Co-operative
Housing Society Ltd.
Ms.Sulbha A.Dhamale, Advocate for Respondent No.1 in All
Petitions.

CORAM : R. G. KETKAR, J.
DATE : 09th JULY, 2015

P.C. :

. Heard Ms.Nutan S.Moily, learned Counsel for the
petitioners, Mr.P.G.Lad, learned Counsel for respondent – M/s.Vyas
Co-operative Housing Society Ltd. and Ms.Sulbha A.Dhamale,
learned Counsel for respondent No.1 in all the Petitions at length.

2. By these Petitions under Articles 227 of the Constitution of India, original defendant No.1 has challenged the judgments and orders dated 16/04/2015 passed by the learned Judge, City Civil Court Grater Mumbai. By these orders, the learned trial Judge allowed the applications filed by defendant - M/s.Vyas Co-operative Housing Society Ltd. (for short 'Society') for taking written statement on record. Since these petitions raise common questions of law and facts, the same can conveniently be disposed of by this common order. For the purpose of appreciating controversy between the parties, facts are taken from Writ Petition No. 4682 of 2015.

3. In support of these Petitions, Ms.Moily strenuously contended that initially respondent No.1 -Adil K.Bhure had instituted Suit on the Original Side of this Court. Rule 89 of the Bombay High Court (Original Side) Rules lays down that in default of filing of written statement, among other things, Suit may be set down on board as undefended. It is the case of the defendant No.3 – Society that it had lodged written statement in the year 2005 and the written statement was under objections. Defendant No.3 - Society came with the case that written statement was collected by some clerk who was not authorised by defendant No.3--Society. She submitted that this Court had framed issues in the Suit. On 27/09/2012, the Suit was transferred from this Court to the City Civil Court, Mumbai. She submitted that plaintiff and defendant No. 3 – Society are colluding

and plaintiff gave no objection for allowing the application filed by defendant No.3- Society. She submitted that if defendant No.3 – Society is now allowed at this stage to file written statements, great prejudice will be caused to defendant No.1. In any case, if the defendant No.3 – Society is allowed to file written statements at this stage, costs may be imposed. Finally, she submitted that defendant No.1 may be permitted to cross examine plaintiff's and defendant No.3's witnesses to establish the case of defendant No.1 about their collusion.

4. By the impugned order, the learned trial Judge has allowed the application filed by defendant No.3 -Society and permitted written statement sworn on 28/03/2015 to be taken on record. In paragraph 8 of the impugned order, the learned trial Judge recorded that plaintiff, defendant No.1 & defendant No.3 -Society admitted that written statement was lodged by defendant No. 3 on 13/01/2005 in this Court which was returned to the clerk of Advocate. Thus, from the record it is evident that defendant No.3 – Society attempted to file written statement on record. In paragraph 9, it was observed that defendant No.1 did not point out that whether any 'No W.S. Order' was passed against defendant No.3 – Society. The Court and every party to the Suit was under impression that written statement of defendant No.3 – Society is on record as issues were framed prior to the transfer of the Suit from the

High Court to the City Civil Court, Mumbai. In paragraph 11, the learned trial Judge also observed that defendant No.1's case is that there is collusion between plaintiff and defendant No.3. However, defendant No.1 will get chance to bring on record alleged collusion by cross examination of defendant No.3 – Society if written statement is permitted. Ms.Moily expresses her apprehension that the trial Court will not permit defendant No.3 to cross examine witnesses of plaintiff and defendant No.3 – Society. It is, therefore, clarified that defendant No.1 is permitted to cross examine witnesses of the plaintiff and defendant No. 3- Society for establishing defendant No.1's case about collusion between plaintiff and defendant No.3 – Society.

5. It is also evident that on 10/03/2015 Prothonotary and Senior Master had addressed a communication to the Advocate for defendant No.3-Society recording therein that upon perusal of the register maintained in the office, it appears that advocate clerk had collected the written statements (which were under office objection) on 13/01/2005 in all the suits. In view thereof, I do not find that the learned trial Judge committed any error in passing the impugned order,Hence, Petitions fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)