

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

WRIT PETITION (STAMP) NO.16603 OF 2014

Chunilal Jagandasji Vaishnav

.. Petitioner

Versus

Kamal Radheshyam Dadhich

.. Respondent

Mr. Sandesh D. Patil, Advocate for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 16th JANUARY, 2015

PC.

1. Not on board, at the request and by the consent of the learned counsel of the Petitioner taken up for admission along with Writ Petition No.6152 of 2014 filed by the same Petitioner. The writ jurisdiction of this Court is invoked against the order dated 09.04.2014 passed by the Learned Joint Civil Judge, Senior Judge, Thane, by which order the application Exh.40 came to be rejected.

2. The said application Exh.40 was filed under Order VII Rule 11(d) of the CPC. The said application is founded on the fact that as per Section 163 of the Maharashtra Co-operative Societies Act, the jurisdiction of the Civil Court is expressly ousted and therefore, the said Court is required to reject the counterclaim. The relief in the counterclaim is as under -

“b. The plaintiff be directed to pay the society's outstanding dues and transfer the suit flat i.e., premises no.3 in the building in the Sugra Co-operative housing society Ltd., and the share certificate bearing serial no.53 of the five shares bearing no.261 to 265 be transfer by the society in the name of this Defendant/Applicant.”

3. The Trial Court has observed that the Defendant has not claimed any relief against the society in the counterclaim and the only reliefs sought is mandatory direction against the Plaintiff for paying maintenance charges to the society. The Trial Court has further observed that the society has no concerned to the dispute between the parties. Therefore, it is not required to drag the society in the suit. The Trial Court has lastly observed the claim of the Defendant is not the society, but against the Plaintiff. The dispute in the suit is as regards the agreement dated 04.05.2007 in respect of the flat in question which was executed between the Plaintiff and the Defendant. The Plaintiff i.e. Petitioner in the suit has claimed a declaration that the said agreement dated 04.05.2007 is cancelled and revoked by the Plaintiff vide legal notice dated 21.03.2011 and further declaration is sought that the Defendant is illegally occupying the said flat since 17.04.2011 and therefore, damages are sought on the said basis. It is an undisputed position that the Defendant is not a member of the society and therefore, cannot be driven to the remedies provided under the Maharashtra Co-operative Societies Act. The Trial Court was therefore, right in coming to a conclusion that it had the jurisdiction to try and

entertain the counterclaim. In my view, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]