

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

WRIT PETITION NO.9279 OF 2014

Mr M.N. Commissariat).. Petitioner

V/s

Tardeo Court Co-operative Housing)
Society Ltd).. Respondent.

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Surel Shah a/w Nachiket Khadalkar, for petitioner.
None for the respondent.

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CORAM : M.S. SONAK, J.
DATE : JANUARY 07, 2015

P.C.

1] This petition takes exception to the judgment and order dated 16 July, 2014 made by the Maharashtra State Co-operative Appellate court, Mumbai, upsetting the order dated 02 July, 2013 made by the Co-operative Court No.II, Mumbai. By the order dated 02 July, 2013, the Co-operative Court No.II, had directed the respondent to offer inspection and tender the copies of certain documents to the petitioner.

2] The respondent-society has lodged the claim in the form of CC/II/547 of 2008 against the petitioner in the Co-operative Court No.II for seeking recovery of amount of Rs.24,74,694.75 ps towards

the maintenance and other dues, details of which, have been set out in the claim statement. Till date, the petitioner has not filed any response to the same. Instead, by the application dated 02 March, 2009, the petitioner applied for inspection and copies of the following documents, stating that the same are essential to oppose the claim of the respondent :-

1. Give inspection of accounts and society to furnish detailed statement of the claim made in the notice.
2. Statement of Lease Rental Account, Leave rent lodger accounts from inception. The details of when the lease rent cheques are paid with cheque Nos. and date of payment.
3. Statement of Collector's land taxes, details of payment of collectors taxes, paid on account of various plots and in particular Plot Nos. C.S. Nos.302, 298 and 299 and the apportionment and recovery thereof.
4. Statement of Municipal Taxes. There is obvious disparity between the actual Municipal taxes levied and amounts demanded by the Society from its members. My client debited with inflated taxes in bills forwarded by the society.
5. Statement of Water charges billed by the Municipal Corporation whether recovery of such water charges is made in adherence to the directives given by Maharashtra Government under its notification in this regard.
6. To submit original Share Certificate No.25, for which my client has made several demands.
7. Inspection report of the Municipal Corporation of the taxes levied on individual premises, which will clearly reflect liability of individual members on this account.

8. Inspection of interest charged by Society to the members for delayed payments, as Society has not been charging interest to a number of members.
9. Inspection of major repair expenses for garages and the basis of apportionment to individual members on the basis of the location i.e. under the building and on the common passage and whether closed/open parking spaces.
10. Copies of the all tendered received by the Society for major repairs in response to Public Notice issued with copies of public notice issued inviting tenders, copy of original order placed by the Society for major repairs, copies of Bonds received from the contractor for securing advance payments made, copy of performance guarantee and during of its validity, copy of the total accounts of major repairs in details alongwith separate audit report and name of the auditor, who has audited the major repairs account and his report thereof. Details of surface area of plastering/repair works and other work carried out.
11. Copies of FIR lodged with Police for embezzlement and recoveries made.
12. Society to inform date on which the contractor has left the premises with his workmen.
13. Inspection of Resolution wherein it was resolved that no recovery of major repair charges from my client on account of permitted user of well water till Defendant 1995 and subsequent prorate levy for further usage from 1/1/1996 onwards. Please refer to para 7 of the letter of M/s Mulla & Mulla dated 15/5/97 bearing Ref.No.12827 in reply to society's advocate Jitendra R. Merchant's letter dated 5/5/1997.
14. Copies of the reply to the letter/s of Deputy Registrar's letters dated 21/7/2004 bearing Ref.No.332/2004 and letter dated 25/5/2005 bearing Ref.No.343/2005.
15. Inspection of Society's forwarding letter submitting General

Body Resolution for adoption of new Bye laws bearing No.E-11/81 dated 5.10.84 for approval by Registrar, as reported in the Management Report dated 18.01.90 on page 2, accompanying 22nd annual Report for the year ended 30.06.1989.

16. Details of legal charges paid by the Society and recovery thereof made one equal sharing basis, as provided in law.
17. Inspection/copies of the reworked and fresh bills issued to my client as per directions issued by the Registrar subsequent to the decision of the High court in the matter of Venus Society and State Government Notification.
18. To grant inspection and furnish Xerox copies of indemnity Bond/s executed by the Managing Committee members since the introduction of the law thereof/thereto. Hereto annexed and marked Exhibit "D" Colly, are copies of the correspondence referred to Notice dated 07.02.2008 and reply dated 16.12.2008.

3] On behalf of the respondent, the response was filed on 14 December, 2009, in which it was stated that since the certified copy of the Statement of Accounts of already filed alongwith the claim statement, there is no question of furnishing the document at Sr.No.1. So far as the document at Sr.No.2 is concerned, it was pointed out that the petitioner himself is lessor and any dispute in connection with the lease, cannot not form the subject matter of the present dispute. As regards to documents at Sr.Nos.3, 4 and 5 it was pointed out there are discrepancies and that in any case the petitioner is not entitled to the details as applied for. As regards the document at Sr.No.6, it was pointed out that the original share certificate had been delivered to the petitioner and in case the

petitioner makes an application for a duplicate share certificate, such application would be considered in accordance with law. With regard to document at Sr.No.7, it was pointed out that the copy of the inspection report is not available with the respondent. With regard to the document at Sr.No.8, it was pointed out that the information sought in the nature of interrogatory. Similarly, with regard to the document at Sr.No.10, it was pointed out that the repairs were undertaken in the year 1993-94 and that such details cannot be offered after the passage of almost 16 years. With regard to documents at Sr.Nos.11, 12, 14, 15, 16 and 18, it was submitted that these documents are totally irrelevant to the dispute raised. Similarly, with regard to the document at Sr.No.13, it was pointed out that there was no resolution as alleged.

4] The Co-operative Court No.II, by its order dated 02 July, 2013 after relying provisions contained in Section 32 of the Act had directed inspection and furnish of the documents as listed in the application, except the documents at Sr.Nos. 6,11 and 18.

5] The Maharashtra Co-operative Appellate Court in its impugning order dated 16 July, 2014 has, however, set aside the order dated 02 July, 2013 inter alia, by observing that except for the document at Sr.No.1, the rest of the documents were not those referred to under Section 32(1) of the said Act.

6] Shri Shah, the Learned Counsel for the petitioner

accepted that the application made by the petitioner could not have been considered as made under Section 32(1) of the said Act. However, the Learned Counsel submitted that under Section 94(1) of the said Act, the Co-operative Court had ample powers in the matter of compelling production of the documents. Therefore, the order dated 02 July, 2013 made by the Co-operative court, was infact relatable and sustainable under Section 94(1) of the said Act. In as much as, the Revisional Court has not even taken into consideration this position in law and proceeded on the basis that there is no provision under the said Act to direct the inspection or furnish the copies, there is a clear failure to exercise jurisdiction. This, warrants interference by this court in the exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India.

7] Having considered the submission made by the Learned Counsel for the petitioner, in my judgment, there are no grounds to interfere with the impugned order. If the petitioner's application dated 02 March, 2009 seeking inspection and copies is perused, it is clear that the same is in the nature of fishing expedition. In the application, the petitioner has made no attempt to disclose the relevance of the documents/information, which he seeks. The petitioner is aware that many of the documents which he seeks, pertains to a period between the years 1968 and 1981. Some of the documents pertains to repairs, that were carried out to the society's buildings in the year 1993-94. The application, as noted earlier, is blissfully vague and on the basis of the same, the petitioner has

succeeded in delaying the proceeding before the Co-operative Court No.II, for a period of almost five years.

8] The Appeal Court has rightly observed that the petitioner's application was not at all maintainable under Section 32 of the said Act, except perhaps in relation to the document at Sr.No.1. This ground by itself was sufficient to set aside the Co-operative Court's order dated 07 July, 2013. True, under Section 94(1) of the said Act, the Co-operative Court has powers to summon and enforce attendance of the parties and as also to compel the production of the documents in the same manner as provided under Code of Civil Procedure. However, under Code of Civil Procedure, the court would be loathe to entertain an application, when the applicant embarks upon a fishing expedition or roving enquiry, without in any manner disclosing the relevance of such documents, for the purpose of his defence. It is not the case of the petitioner that the documents which he seeks are those which have been referred to or relied upon by the respondent in its statement of claim. The entire approach of the petitioner appears to delay the proceedings before the Co-operative Court No.II, in which the respondent has raised a claim of about Rs.25 lacs for the maintenance and other charges said to be payable by the petitioner. A Writ Court cannot extend any assistance to such petitioner. A writ Court cannot be made use of perpetuate such delay. There is neither any jurisdictional error nor any perversity in the impugned order.

9] Shri Shah, the Learned Counsel for the petitioner fairly

points out that “No Written Statement Order” has already been made against the petitioner and the petitioner has made application for recall of the same. Shri Shah, the Learned Counsel also points out that alongwith the application seeking recall, the petitioner has appended his written statement. If this be a position, then notwithstanding the petitioner's misadventure in making and pursuing the application for inspection / copies of the documents, the Co-operative Court No.II, may sympathetically consider recalling “No Written Statement Order”, so that matter can proceed expeditiously and on its own merits. The Co-operative Court No.II is directed to dispose of the case No.C.C./II/576 of 2008, as expeditiously as possible and in any case within a period of one year from today. The petitioner shall tender co-operation in the matter of such expeditious disposal.

10] With the aforesaid observations, the writ petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)