

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.2657 OF 2015

(Sau. Kanchan Shyam Chhutlani ..vs.. Sudhakar Rrangraoji Kalmegh and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 03-07-2015

Heard Shri A.S. Kilor, learned Advocate for the petitioner.

2. The respondent No.1 has filed dispute before the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960, praying for declaration that the annual general meeting of the society held on 15-5-1996 is null and void, that the resolution passed in the meeting of executive committee on 30-1-1998 is null and void and the sale-deed executed by the respondent No.3 (opponent No.2) in favour of Shri Shashikant is null and void. Shri Shashikant has expired and the respondent Nos.4, 5 and 6 had sold the suit property to the respondent No.7 and the petitioner has purchased the suit property from the respondent No.7.

3. The respondent Nos.4, 5 and 6 had filed an objection before the Co-operative Court to the effect that the Co-operative Court has no jurisdiction to decide the

controversy. This objection came to be rejected by the Co-operative Court by the order dated 25-3-2014.

4. After the petitioner came to be impleaded as party to the dispute before the Co-operative Court, the petitioner filed the application (Exhibit 44) raising the objection that the Co-operative Court has no jurisdiction to entertain and decide the dispute. The Co-operative Court has rejected the application (Exhibit 44) filed by the petitioner. The petitioner being aggrieved in the matter, has filed this writ petition.

5. The petitioner has stepped in the shoes of the respondent No.7. The petitioner has no independent right and the petitioner can take the objections which could have been earlier raised by the respondent Nos.4, 5 and 6 and then by the respondent No.7. The Hon'ble Supreme Court in the judgment given in the case of ***Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and others*** reported in (2013) 5 SCC 397, has held that purchaser *pendente lite* can raise and pursue only defence as were available and taken by the original owner. Applying the proposition of law as laid down by the Hon'ble Supreme Court, in my view, the petitioner cannot be permitted to raise the objection again, after the same objection raised by the respondent Nos.4, 5 and 6 is rejected by the Co-operative Court.

6. The Co-operative Court has properly dealt with the issue and has rightly rejected the application (Exhibit 44) filed by the petitioner. I do not find any error in the impugned order.

The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

pma