

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

WRIT PETITION NO.3841 OF 2016

Mr.Kirit P. Kapadia & Ors.

..Petitioners

V/s.

Walkeshwar Triveni Co-operative
Housing Society Ltd.

.. Respondent

Mr.R.M.Lanjekar for the petitioners.

None present for the respondent.

CORAM : M.S. SONAK, J.

DATE : 18th APRIL, 2016.

P.C.

1. Heard learned counsel for the petitioner.

2. The challenge in this petition is to the order dated 22nd January 2016 made by the Maharashtra State Co-operative Appellate Court, Mumbai dismissing petitioners Revision Application No.44 of 2015 against order dated 21-10-2015 made by the Co-operative Court No.1, Mumbai granting leave to the respondent society to amend its dispute application.

3. The learned counsel for the petitioner contended that the petitioner had infact recorded consent to grant of reliefs

prayed for by the society in terms of clauses 'f', (i), (ii). In these circumstances, the learned counsel for the petitioner contended that the Co-operative Court could have as well made an order in favour of the society by applying the principles analogous to those contained in order 12 Rule 6 of the Civil Procedure Code. The learned counsel for the petitioner contends that in such situation, the entire dispute would have stood worked out. Instead of that, the Co-operative Court, has granted leave to the society to amend the dispute application as well as application seeking interim reliefs. He pointed out that such application for amendment was also made belatedly.

4. Having considered the aforesaid submissions and perused the record I am satisfied that this is not a fit case to interfere with the impugned orders in the exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. There is no obligation to make a judgment on admissions, even in terms of Order 12 Rule 6 of Civil Procedure Code. In any case, the petitioner had recorded consent for grant of relief only in terms of some of the prayer clauses of the dispute application. The delay in the present case, was not substantial. The

application for amendment was made even before the issues could be framed. Accordingly, this is not a case where there was any perversity or unreasonableness in the matter of exercise of discretion by the Co-operative Court and the Revisional Court.

5. In the situation of this nature, however, the two Courts, ought to have awarded some cost. Therefore, in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the respondent society is directed to pay cost of Rs.5,000/- to the petitioner herein. Although, the payment of such cost will not be a condition precedent for proceeding with the amendment of the dispute application, the Co-operative Court is requested to ensure that the respondent society indeed shall pay such cost to the petitioner within a period of four weeks from the date of production of authenticated copy of this order.

6. This Court is conscious that the order of payment of cost is being made even though, no notice has been issued to the respondent society. However, the order for payment of cost is not punitive. If notice is required to be issued to the respondent

society at this stage, it is possible that the respondent-society will be required to expend the amounts in excess of Rs.5,000/- for the purpose of defending the impugned orders, which in any case are not being interfered with.

7. The petitioner is granted liberty to file additional written statement and affidavit in reply, now that the amendments are being finally allowed. The same may be filed within a period of six weeks from today.

8. Writ Petition is disposed of in the aforesaid terms. The petitioner is directed to produce authenticated copy of this order before the Co-operative Court on 06th May 2016, which is the date fixed before the Co-operative Court.

9. All concerned to act on authenticated copy of this order.

(M.S. SONAK, J.)