

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

CIVIL APPLICATION NO.286 OF 2015

IN

WRIT PETITION NO.1073 OF 2007

Ram Khialdas Manghnani

.. Applicant

Versus

Ganpat Niketan Co-op. Hsg. Society Ltd.

.. Respondent

Mr. Ashish Mishra, for the Applicant.

Mr. V. S. Kapse i/by Mr. Vinod Juwale, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 8th MARCH 2016

PC.

1. Though in the above Civil Application the three prayers have been prayed for which are prayer clauses (a), (b) and (c), the Learned Counsel for the Applicant Mr. A. V. Mishra states that the Applicant would only press prayer clause (c). The said prayer reads thus :-

“(c) That this Hon'ble Court may restrain the Secretary and other Members from parking their case in front of Applicant's Office No.1/Garage;”

Hence, the Applicant by seeking prayer clause (c) desires to restrain the Secretary and other members of the society from parking their cars in front of the Applicants Garage.

2. In the context of the relief sought vide prayer clause (c), it would be apposite to refer to few background facts. The above Writ Petition has been filed challenging the order dated 12.10.2006 passed by the Member of the Maharashtra State Co-operative Appellate Court, Mumbai, by which order, the Appeal filed by the Applicant being Appeal No.41 of 2006 came to be dismissed and the Appeal filed by the Respondent society being Appeal No.45 of 2006 came to be allowed and resultantly, declaration came to be issued that the resolution of the managing committee dated 29.04.1999 thereby admitting the opponent i.e. the Applicant as member and allotting him five shares is declared as illegal and inoperative. The same was accordingly quashed and set aside. The second relief granted was that the Opponent i.e. the Applicant herein was restrained permanently from using suit garage and/or carrying on any commercial activities in any manner either through himself or through his agents servants or persons claiming through him. The Appellate Court accordingly modified the Award passed by the Trial Court i.e. the Co-operative Court. The Co-operative Court had by judgment and order dated 23.01.2006 had partly allowed the dispute whilst prayer clauses (a), (d), (e) and (f) were rejected. The Co-operative Court had granted other prayers sought by the Disputant society.

3. The above Petition has been admitted and is pending hearing

and final disposal. It seems that an order dated 30.11.2007 came to be passed granting protection to the Applicant on the condition that he stops commercial user of the said Garage within three months. The said order was passed on the basis of the statement which was made on behalf of the Applicant i.e. the original Petitioner. The said order in a way was a conditional order in as much as if the statement was not complied with then the interim protection was to stand vacated. The instant Civil Application has been filed on 01.07.2014 seeking by way of prayer clause (c) the relief which has been adverted hereinabove. It is required to be noted that the Applicant was a member of the society in respect of Flat No.12 in the building of the society. The Applicant has sold the said flat vide Sale Deed dated 24.03.1999. However he has retained possession of the Garage though he ceased to be a member of the society on the sale of the said flat. The Applicant it seems was a member of the managing committee of the Respondent society. After the sale of the said Flat No.12 the Applicant was in the forefront of the passing of the Resolution dated 29.04.1999 in the meeting of the society, whereby the Applicant was granted membership of the society on the basis of the possession of the Garage. It is after the said Resolution was passed by the society and after a new managing committee came into office that the dispute started and the contentious issue between the parties is as to whether the Applicant could

be a member of the society qua the Garage. As indicated above, the Co-operative Appellate Court has dismissed the Appeal filed by the Applicant and allowed the Appeal filed by the Respondent society and issued a declaration that the said resolution dated 29.04.1999 conferring membership on the Applicant was illegal. The Garage is in the compound of the society wherein there is open parking for the members. The Learned Counsel for the parties have produced photographs showing the cars parked in front of the Garage and in the compound of the society. A reading of prayer clause (c) would indicate that what is sought is ostensibly an innocuous relief. However, if the said relief is granted, it would have consequences for the members of the society. Whether such a relief can be granted to a person who has ceased to be a member of the society on account of the sale of the flat and has been conferred membership on the basis of the possession of the Garage therefore begs an answer. In my view, such a relief cannot be granted to the Applicant, as the Applicant has ceased to reside in the society's building and was using the Garage for commercial purposes and now wants to make a u turn and seeks to use the said Garage for parking thereby jeopardising the interest of the members who are residing in the society. Hence, no relief can be granted to the Applicant. The Civil Application is accordingly rejected.

[R.M. SAVANT, J]