

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

WRIT PETITION NO. 7582 OF 2014

Shri Shreepal Nagar Jain Swetamber Petitioners
Murti Pujak Upashraya Trust, through
its Trustees Mr. Ramanlal Lalchand Jain
& Ors.

Versus

Raja Shreepal Co-operative Housing Society Respondent
Ltd.

N.N.Bhadrashete for petitioners.
Sunny Shah i/b. A. Bharat & Co. for respondent.

***CORAM : N. M. Jamdar J.
Saturday 1 October, 2016***

ORAL ORDER

. By this Petition, the petitioners challenge the order dated 2 May 2013 passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai. Wherein, the Appeal from Order No. 150 of 2009 was dismissed and Appeal from Order No. 79 of 2009 was partly allowed. The interim orders were passed regarding the cancellation of share certificate and restraint in respect of performing Pooja in the shed, serving of food and restraining the employees/servants from sleeping in the basement.

2. The petition is filed by a Temple Trust which is located in the premises of respondent Co-operative Housing Society. The dispute was initially filed in the year 1978, wherein consent terms were filed. In the year 1992, thereafter the dispute again arose in between the parties and present proceedings bearing No. CC/II/5 of 2009 were instituted. An application for temporary injunction was moved by the petitioners and an order was passed by the learned Judge, Co-operative Court No. II, Mumbai, against which an interlocutory Appeals bearing No. 150 of 2009 and 79 of 2009 were preferred, dismissal of which has led to the present petition.

3. The petition was filed on 12 August 2014. The petition has appeared on board by the Court on numerous occasions. Various orders have been passed, where an attempts have been made to resolve the dispute amicably. On 10 May 2013 the order was passed by the learned Single Judge (Ranjit More, J.) as under :

“1. Having heard learned Counsel for the respective parties, I am of the opinion that this writ petition deserves to be heard finally at the admission stage itself. Place the writ petition on board on 22nd July 2013, for final hearing at the stage of admission.

2. So far as interim relief is concerned, following facts are relevant :

Trial Court granted injunction restraining the Respondent Society from obstructing the employees and servants from, in any manner using basement leased to the disputant trust for the purpose of sleeping/using and

organizing pooja and functions and cooking food and holding lunch in the shade, i.e., Ambil Shala, till final decision of the dispute. This order was passed on 27th April, 2009. This order was challenged by the Respondent-Society by filing appeal before the Co-operative Appellate Court, being Appeal No. 79 of 2009. During the pendency of appeal, there was no stay to the order granting injunction in favour of the petitioner. The appeal is disposed of by the order dated 2nd of May 2013, which is impugned in this petition thereby the injunction granted by the trial Court is restricted to the preparation and service of Ambil food in the basement/shed in question.

3. *The function known as Varsi Tap Parnas (fast breaking) is to be celebrated on Akshay Tritiya which falls on 13th May 2013. In my opinion, in the absence of any interim relief, the petitioner will suffer great prejudice and on the contrary no prejudice will be caused to the Respondent-Society if the interim relief is granted inasmuch as at least from the date of trial Court's order granting interim relief, the petitioners are using the said basement/shed for the purpose of sleeping/using and organizing pooja and functions and cooking food and holding lunch in the shade, i.e., Ambil Shala, etc. In the circumstances, till the returnable date, there shall be interim relief in terms of prayer clause (d)."*

4. Thereafter an order was passed by K. K. Tated, J. on 19/7/2013 as under :

"1. Not on board. At the request of petitioner, matter is taken on board for urgent relief.

2. The learned counsel for the petitioner states that by this petition under Article 226 and 227 of the Constitution of India, they are challenging the order dated 2.5.13 passed by Maharashtra State Co-op. Appeal Court,

Mumbai in A.O.No.79 of 2009 modifying the trial court's injunction order only to the extent of preparing ambil food and serving ambil food confirmed, while the order for preparing and serving any other food is quashed and set aside.

3. The learned counsel for the petitioner pointed out that in a dispute no. 5 of 2009, they preferred application below Exhibit 5 for injunction. That was decided by Co-operative Court, Mumbai on 27.4.2009 restraining respondent Society from obstructing the petitioners in any manner using basement leased to the petitioner org. disputant trust for the purpose of sleeping/using and organizing Pooja and functions and cooking food and holding lunch in the shade i.e. Ambil Shala, till final decision of the dispute. Operative part of the said order dt. 27.4.2009 reads thus :

ORDER

- “1. The opponents and persons through them are restrained from obstructing the trust employees and servants from, in any manner using basement leased to the disputant trust for the purpose of sleeping/using and organizing Pooja and functions and cooking food and holding lunch in the shade i.e. Ambil Shala, till final decision of the dispute.*
- 2. The opponent society is restrained from cancellation of share certificate issued to the disputant till final decision of the dispute.*
- 3. Prayer no.II stand rejected.*
- 4. Disputant can deposit amount of whole lease rent in Court under protest.*
- 5. No order as to costs.”*

4. The learned counsel for the petitioners pointed out that this court by order dated 10.5.13 directed to hear the

present petition for final hearing at the stage of admission itself.

5. Considering these facts, office is directed to place the matter for final hearing in the week commencing from 26.8.2013. Till that time, interim protection granted by trial court on 27.4.2009 to continue.

6. The learned counsel for the respondent waives service.

7. Respondents to file their affidavit in reply on or before the next date and serve copy on the other side.

8. The learned counsel for the respondents states that the petitioners, from time and again violated the interim protection granted by the Co-operative court dated 27.4.2009. If this is the fact, liberty granted to the respondents to take out appropriate application for taking action against petitioners, if they violate the order dated 27.4.09 during the pendency of the present petition.

9. In this view of the matter, no order on the Notice of Motion. Notice of Motion be heard along with Writ Petition in the week commencing from 26.08.2013.”

These orders were continued from time to time and by order dated 14 March 2014 as under :

“Learned counsel for the parties state that the parties are in process of settling the dispute amicably. Stand over to 4 April, 2014; to be placed under the caption “for directions.” The learned counsel for the parties shall inform their respective clients to remain present in the court on the next date so that an attempt for resolving the issue amicably can be made.

Ad-interim relief granted earlier to continue till next date.”

and by order dated 4 April, 2014 as under :

“ During the course of hearing, considering the nature of the controversy involved in the matter, it was found appropriate that before decision on merits is taken, parties should explore possibility of amicable resolution of dispute through mediation process. After due deliberations the learned counsel for the parties agree that two mediators be requested to mediate between the parties, one a religious head who would be able to appreciate the religious aspect of the matter and, a retired Judge to provide judicial experience.

2. From the names suggested by the Petitioner a religious head by name Muniraj Shri Sayyamprabhvijayji Maharaj Saheb is appointed as mediator. The learned counsel for the respondent states that Hon'ble Mr. Justice S.K.Shah (ret'd.), be appointed as a mediator. The learned counsel for the parties have no objection for these names suggested to act as a mediator as such.

3. Accordingly, the Co-ordinator mediation centre will contact both the mediators with a request to mediate upon the dispute and if possible, commence the mediation process at the earliest. The learned counsel for the parties will assist the mediation centre to contact the mediators immediately.

4. Ad-interim granted to continue till the next date. Stand over to 2 May 2014.”

Parties were directed to explore the possibility of amicably resolving the dispute. The mediation process was tried through a religious head and a retired Judge of this Court.

5. The learned Counsel for the parties inform that the mediation process has failed. On two occasions, detailed orders

have been passed on 11 July, 2014 and 7 August, 2014. The resultant position is that the petition which arises from purely interlocutory arrangement in a dispute has remained pending on the file of this Court and various interim orders have passed and substantial attempts have been made to resolve the dispute. Time and again, it was emphasized that the dispute, which has religious connotation, should better be resolved by amicable settlement, but both the parties have not shown willingness to arrive a consensus. In the circumstances, an appropriate course of action would be to continue the interim arrangement which has been arrived at in the petition and which is holding the field since last almost three years till the disposal of the dispute and the dispute be directed to be decided at the earliest. The learned Counsel for the parties, after arguing the matter for sometime, also state that this could be appropriate course of action to be taken.

6. The learned Counsel for the respondent states that certain modifications would be required. The learned Counsel for parties are agreeable as far as modifications required, due to passage of time, are kept open, that would serve the interest of justice. Accordingly, the Writ petition is disposed of by the following directions.

- (a) The learned Judge, Co-operative Court, Mumbai will take up the dispute bearing No. CC/II/5 of 2009 and

dispose of the same within the period of six months from the date, writ of this Court reaches it.

- (b) It is on express assurance of the learned Counsel for the parties on behalf of their clients that all parties will co-operate with the learned Judge, Co-operative Court for early disposal of the dispute within the above stated time limit.
- (c) An interim arrangement which has been operating in this petition, as reproduced above shall continue till disposal of the dispute.
- (d) It is open to the parties to move the learned Judge, Co-operative Court for modification of the interim order, if due to passage of time same is warranted, the said decision will be taken by the learned Judge, Co-operative Court after hearing both the sides.
- (e) It is clarified that in case the learned Judge, Co-operative Court finds it necessary to decide the dispute itself than to modify the interim order, it will be open for the learned Judge, Co-operative Court to take the said view after hearing both the sides.
- (f) It is clarified that the observations made in the impugned order are prima facie and the dispute will be decided on its own merits.

7. Merely because the dispute is directed to be resolved finally by the Co-operative Court, does not mean that the parties are absolved from their responsibility to ensure that the dispute be resolved amicably and they should make an attempt to arrive at a solution by way of consensus.

(N. M. Jamdar, J.)