

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6402 OF 2015**

**Shri Siddheshwar Flat Owners Co-op Hsg Sty Ltd
Vs.**

..Petitioner

Shri Laxman Jadhav & Ors

..Respondents

WITH

WRIT PETITION NO. 1602 OF 2016

**Shri Siddheshwar Flat Owners Co-op Hsg Sty Ltd
Vs.**

..Petitioner

Shri Laxman Jadhav & Ors

..Respondents

Mr. I. M. Khairdi for the Petitioner

Mr. A. B. Tajane for the Respondent No.1

Mrs. V. S. Nimbalkar AGP for the Respondent Nos.2 to 4

CORAM : R. M. SAVANT, J.

DATE : 16th FEBRUARY, 2017

P.C.

1 Leave to amend is granted in so far as Writ Petition No.6402 of 2015 so as to correct prayer clause (b) in so far as date “22-5-2015” is concerned which is to be corrected to “22-4-2015”. Amendment to be carried out forthwith.

2 The above Writ Petition No.6402 of 2015 takes exception to the order dated 22-4-2015 passed by the Divisional Joint Registrar, Pune, by which order the stay application filed by the Petitioner in the Revision Application filed by it came to be rejected.

In so far as Writ Petition No.1602 of 2016 is concerned, the same takes exception to the order dated 16-12-2015 passed by the In-charge Divisional Joint Registrar, Pune, by which order, the Revision Application filed by the Petitioner came to be dismissed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent No.1 herein has purchased a gala in the building of the Petitioner society in respect of which gala he claimed membership of the Petitioner society. The said application of the Respondent No.1 was rejected by the Petitioner society on the ground that the application would be considered only if unauthorised construction in respect of which notice has been given by Solapur Municipal Corporation is removed. The said rejection was in terms of bye-law Nos.40A and 41B of the bye laws of the Petitioner society.

4 The said rejection was carried in Appeal under Section 23(2) of the Maharashtra Co-operative Societies Act to the District Deputy Registrar of Co-operative Societies, by the Respondent No.1. The said Appeal came to be allowed by the District Deputy Registrar of Co-operative Societies by order dated 3-2-2015. The Petitioner society challenged the said order dated 3-2-2015 by filing a Revision before the Divisional Joint Registrar. In the said Revision the Petitioner filed an application for stay of the order passed by the

District Deputy Registrar, Co-operative Societies. The said stay application has been rejected by the Divisional Joint Registrar, Co-operative Societies, by order dated 22-4-2015 and the rejection is on the ground that since the Respondent No.1 has made compliance of the requirements, he could not be deprived of the membership of the Petitioner society and that a Civil Suit was pending in respect of the alleged unauthorised construction which Suit is filed by the Respondent No.1 herein. In so far as the rejection of the application for stay is concerned, by refusing to grant interim relief of stay of the order of the District Deputy Registrar granting membership to the Respondent No.1, the Revisionary Authority has virtually turned the Revision Application filed by the Petitioner society infructuous. It is well settled that by way of interim reliefs final reliefs cannot be granted in a proceeding, if the said proposition of law is taken conversely, then in a remedy which is a substantial remedy adopted by a party, the refusal of interim reliefs to that party leads to the proceeding being turned infructuous.

5 In my view therefore, the impugned order dated 22-4-2015 would have to be quashed and set aside and is accordingly quashed and set aside. The application for interim relief Exhibit 5 filed by the Petitioner society would stand allowed. The entitlement of the Respondent No.1 to the membership of the Petitioner society would be contingent upon the result of the Revision Application filed by the Petitioner society.

This is in so far as the Writ Petition No.6402 of 2015 is concerned.

6 In so far as Writ Petition No.1602 of 2016 is concerned, as indicated above, the in-charge Divisional Joint Registrar has by the impugned order dated 16-12-2015 dismissed the Revision itself. It has been recorded in the preface of the impugned order that the In-charge Divisional Joint Registrar has heard the parties on the application for interim relief filed by the Revision Applicant. This is the first flaw in the impugned order passed by the In-charge Divisional Joint Registrar. The In-charge Divisional Joint Registrar thereafter proceeds to record the submissions urged on behalf of the Revision Applicant which he purports to reproduce in the impugned order. The order of the In-charge Divisional Joint Registrar is challenged on the ground that no notice of the hearing before the Divisional Joint Registrar was given to the Petitioner society which was necessitated in view of the fact that the In-charge Divisional Joint Registrar was to hear the Revision Application, in view of the fact that the incumbent of the post of the Divisional Joint Registrar had been transferred. The fact that the Petitioner was unrepresented on the day when the impugned order was passed and that no hearing was given to the Petitioner is not disputed by the Learned Counsel appearing for the Respondent No.1.

7 In my view therefore, the impugned order dated 16-12-2015 would have to be quashed and set aside and is accordingly quashed and set aside and the following directions are required to be issued:

(i) The impugned order dated 16-12-2015 is quashed and set aside and the matter is remanded back to the Divisional Joint Registrar for a denovo consideration of the Revision Application.

(ii) The parties to appear before the Divisional Joint Registrar on 27-2-2017. The Divisional Joint Registrar would thereafter decide the Revision Application latest by 30-4-2017 by giving proper opportunity to the parties.

(iii) As observed hereinabove, the entitlement of the Respondent No.1 to the membership of the Petitioner society would be contingent upon the result of the Revision Application.

(iv) It is made clear that the contentions of the parties are kept open for being urged before the Divisional Joint Registrar. The Divisional Joint Registrar would hear and decide the Revision Application on its own merits and in accordance with law.

8 With the aforesaid directions the above Writ Petition No.1602 of 2016 to stand disposed of.

[R.M.SAVANT, J]