

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

WRIT PETITION NO.3603 OF 2016

Mr. Manohar R. Ashtavadhani and others ..Petitioners
Versus

**Sagar Darshan Co-operative Housing
Society Ltd. and others** ..Respondents

**Mr. Uday Warunjikar for the Petitioners.
Mr. A. Y. Sakhare, Senior Advocate i/by Mr. S. D. Kadam for the
Respondent No.5.**

**CORAM : R. M. SAVANT, J.
DATE : 2nd MARCH, 2017**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 19.12.2015 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, by which order, the Revision Application filed by the Petitioners came to be dismissed and resultantly, the order dated 14.09.2015 passed by the Learned Judge of the Co-operative Court, Mumbai came to be confirmed.

2 The Petitioners are the original disputants who filed the dispute in question being No.242 of 2011 in the Co-operative Court. The said dispute has been filed inter-alia for a declaration that the management of the society is unauthorized with the board of administrators and as such they be removed by an order of this Court i.e.

the Co-operative Court. The interim reliefs were sought restraining the board of administrators from discharging their duties and a direction was sought to the board of administrators to immediately hold elections to the managing committee of the society. It is prayer clause (b) which is material in the context of the challenge raised in the above Petition. The said prayer clause (b) reads thus :-

“(b) for a permanent injunction on the society from raising its membership strength about 30 and declaration that all members admitted to the Society after 1.3.2004 will not exercise their rights as members in the society till extra FSI (above 2.0 SI is not granted).”

3 The Petitioners filed an application for amendment of the dispute thereby seeking to amend prayer clause (b) so as to delete the portion of prayer clause (b) from the word 'till' in the last line to the word 'granted' in the last line. In so far as the dispute is concerned, it is at the stage where the evidence of the parties is complete and kept for arguments. The disputants have been cross-examined on the basis of the prayer clause (b) as it exists in the dispute. The Trial Court having regard to the stage at which the dispute is at present as also having regard to the fact that the disputants have been cross-examined on the basis of prayer clause (b) by observing that allowing the amendment application may lead to withdrawal of admissions, rejected the application filed by the disputants seeking amendment of the plaint. The order passed by the Co-

operative Court i.e. Trial Court was taken exception to by the Petitioners by filing a Revision Application. The Co-operative Appellate Court which exercised the powers of Revision did not deem it appropriate to interfere with the order passed by the Co-operative Court on the ground that apart from the fact that the trial has progressed in as much as the parties have completed their evidence and the dispute is slated for arguments, the Revisionary Court observed that the Plaintiff has not made out any case on the basis of subsequent events to justify the amendment sought.

4 In my view, having regard to the reasons mentioned in the orders passed by the Courts below which have been adverted to hereinabove, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]