

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

WRIT PETITION STAMP NO.4208 OF 2017

**Shri. Dilip Ganpatrao Patil and others
Versus**

..Petitioners

**Shri. Kalleshwar Sahakari Dudh
Vyavasaik Sanstha Ltd., Top, Taluka
Kagal, District Kolhapur and others**

..Respondents

Mr. C. G. Patil for the Petitioners.

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

CORAM : R. M. SAVANT, J.

DATE : 9th MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 02.02.2017 passed by the Learned Member of the Co-operative Appellate Court (Mumbai) Bench, Pune, by which order, the Appeal filed by the Respondent Nos.1 to 3 herein came to be allowed and resultantly, the order dated 13.12.2016 passed by the Co-operative Court No.II, Kolhapur granting temporary injunction to the Petitioners came to be set aside and the application Exh.5 filed by the Petitioners came to be rejected.

2 The Petitioners herein are the original disputants in Dispute bearing No.263 of 2016 filed by them before the Co-operative Court, Kolhapur. In the said dispute the principal relief sought by the Petitioners

is a declaration and permanent injunction that they being members of the Respondent No.1 society cannot be restrained from exercising their membership rights and participating in the forthcoming election of the society. The further relief sought is that the documents which are allegedly prepared by the Respondent Nos.1 to 3 in respect of the cancellation of the membership of the disputants be declared as bogus, fraudulent and hence liable to be set aside.

3 At this stage, it is required to be noted that the Respondent No.1 is a Co-operative Milk Society meaning thereby that the Respondent No.1 collects the milk from the member/agriculturists in the area of its operation and thereafter supplies the same to the apex society. The disputant Nos.1 to 41 claim to be the members of the Respondent No.1 society. It is incumbent upon the members of the Respondent No.1 society to supply milk to the said society. The cause for filing the said dispute according to the disputants has arisen on account of the fact that their membership has been illegally terminated by the Respondents which was reflected by the absence of the names of the disputants in the audit reports. In the said dispute, the Petitioners filed an application for temporary injunction which relief sought was on the same lines as the relief sought in the main dispute, namely that they should not be restrained from exercising their rights as members.

The Respondent Nos.1 to 3 filed their written statement and took up the defence that out of the 41 disputants, 35 had resigned, 4 were terminated and 2 were accepted as members. It was the case of the Respondents that resignations were tendered on various dates in the year 2004, 2007 and 2014. It was also the case of the Respondents that the disputants had become members of another Co-operative Milk Society and that they were supplying milk to the said society. In so far as the resignation letters are concerned, it seems that the Respondents in the written statement took varying stands as to the reason why the resignation letters could not be produced by the Respondents. The Trial Court i.e. the Co-operative Court considered the application for temporary injunction and by its order dated 13.12.2016 allowed the said application. The Trial Court having regard to the varying stands which were taken from time to time on behalf of the Respondents as regards the non-production of the resignation letters found fault with the Respondents on the said ground. The Trial Court was also of the view that the Respondents have taken up a stand of the resignations having been accepted in the tenure of a particular Chairman, when in fact the Chairman was some other person. The four different stands taken by the Respondents are reflected in the order passed by the Trial Court and especially paragraph 23 thereof. The Trial Court as indicated above has

(902) - WPST-4208-17.

accordingly allowed the said application for temporary injunction by its order dated 13.12.2016. The Respondent Nos.1 to 3 herein carried the matter in Appeal by way of Appeal No.41 of 2016. The Learned Member of the Co-operative Appellate Court (Mumbai) Bench at Pune as indicated above has allowed the said Appeal by the impugned order dated 02.02.2017 and thereby set aside the order dated 13.12.2016 passed by the Trial Court. The Learned Member of the Co-operative Appellate Court was of the view that since Respondents had served upon the disputants the resolutions by which their resignations were accepted and also membership terminated and since the Petitioners had failed to challenge the said resolutions in the dispute, they were not entitled to interim reliefs. The Co-operative Appellate Court was also of the view that since each disputant has got an independent cause of action, it was necessary that separate disputes were required to be filed by the disputants. The Appellate Court was also of the view that the relief which is in the nature of the final relief could not have been granted at the interim stage. The Co-operative Appellate Court also held that the names of the disputants were not part of the voters' list for the previous elections and also their names were not in the audit report as members since the year 2004, the relief of the nature sought by the disputants could not be granted. The Lower Appellate Court observed that since the disputants have

approached the authority under the Co-operative Societies Act i.e. the Assistant Registrar Co-operative Societies against their resignations and cancellations of their membership, it was not necessary for the Co-operative Court to go into the said aspect. As indicated above, the Co-operative Appellate Court has by the impugned order dated 02.02.2017 allowed the Appeal and thereby set aside the order dated 13.12.2016 passed by the Co-operative Court.

4 The Learned Counsel appearing on behalf of the Petitioners i.e. Mr. C. G. Patil would reiterate the case of the Petitioners i.e. original disputants as urged before the Courts below. It was the submission of the Learned Counsel that the credence to the case of the Respondents that most of the Petitioners i.e. the disputants had resigned, cannot be given in the light of the varying stands that the Respondents have taken in respect of the reasons as to why they could not produce the resignation letters. The Learned Counsel would contend that by way of prayer clause (b) resolutions which have been allegedly passed by the Respondent No.1 society accepting resignations of the Petitioners can be said to have been challenged and therefore the Lower Appellate Court was wrong in recording that accepting their resignations, no reliefs could be granted. It was also the submission of the Learned Counsel that the material which was not placed before the Co-operative Court was placed for the first

time before the Appellate Court.

5 Per contra, it was the submission of Mr. A. B. Borkar the Learned Counsel appearing for the Respondent Nos.1 that the relevant documents i.e. resolutions passed by the Respondent No.1 society were served upon the Petitioners i.e. the original disputants and in spite of the same the said resolutions are not challenged by the Petitioners. It was the submission of the Learned Counsel that the names of the Petitioners have not been appearing in the audit reports of the Respondent No.1 society, save and except for the year 2005-06 where names of three disputants were appearing. It was the submission of the Learned Counsel that the Petitioners i.e. original disputants have become members of the another society and have been supplying milk to the said society and have not supplied milk to the Respondent No.1 society since their resignations. It was therefore the submission of the Learned Counsel that the order passed by the Co-operative Appellate Court does not merit any interference in the writ jurisdiction of this Court under Article 227 of the Constitution of India.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The entitlement of the Petitioners i.e. the disputants to the grant of the interim relief sought vide the said

application Exh.5 would have to be considered in the context of the relief sought in the main dispute. As indicated above, the principal relief sought in the main dispute is a declaration and injunction that the Petitioners as members of the Respondent No.1 society cannot be restrained from acting as such. The relief sought vide the application for interim injunction is on the same lines as the relief sought in the main dispute. In so far as the membership of the Respondent No.1 society is concerned, as stated hereinabove a member of a milk society is required to supply milk to the said society. The said society collects the milk and thereafter supplies it to the Apex Milk Federation. In the instant case, there is no material on record placed by the Petitioners to indicate that they have in fact supplied milk after they had submitted their resignations in the year 2004, 2007 and 2014 as the case may be. The said aspect being a defining aspect in so far as the continuation as a member of the milk society is concerned, impinges upon the entitlement of the Petitioners to exercise their rights as members.

7 It is also required to be noted that the Respondents in their written statement have stated that the Petitioners have not exercised their rights as voters in the preceding elections to the Respondent No.1 society. It is also mentioned in the said written statement that the Petitioners have become members of the some other society and are supplying milk

to it. In so far as the first aspect is concerned, the said fact has not been controverted by the Petitioners by producing any contra material in that regard. In so far as the second aspect is concerned, the Respondent Nos.1 to 3 had produced a chart before the Co-operative Appellate Court showing the date from which each of the disputants have not supplied milk to the Respondent No.1 society. The said chart was produced by the Respondent No.1 to buttress its case which was pleaded in the written statement, namely that the Petitioners have become members of some other society and are supplying milk to it. As can be seen from the order passed by the Trial Court, that it was swayed by the varying stands taken by the Respondents as regards the non-production of the resignation letters of the Petitioners. In my view, the defining aspect for the Petitioners being granted relief of the nature sought by the said application Exh.5 would be the satisfaction of the conditions as mentioned hereinabove. The most defining condition would be the supply of the milk by the disputants i.e. the Petitioners to the Respondent No.1 society during the period 2004 to 2014 i.e. after the resignations were tendered by the disputants in the years between the said two years i.e. 2004 to 2014. There is absolutely no material placed by the Petitioners in that regard. In my view, the Lower Appellate Court was also right in coming to a conclusion that the reliefs in the nature of the final

(902)-WPST-4208-17.

reliefs could not have been granted to the Petitioners at the interim stage. The Lower Appellate Court can therefore be said to have set aside the order passed by the Trial Court for reasons which can be said to be germane to the consideration of an application for temporary injunction in the instant case. Hence the order passed by the Co-operative Appellate Court does not merit any interference at the hands of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

8 Needless to state that the observations made in the impugned order as well as the instant order are only for the purposes of considering the application for temporary injunction, the dispute would be tried on it's own merits and in accordance with law.

[R.M.SAVANT, J]