

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2038 OF 2015

WITH

CIVIL APPLICATION No. 443 OF 2016

IN

WRIT PETITION No. 2038 OF 2015

Omprakash Vyas and Ors.

....Petitioners /
Applicants

Vs.

Manohar J. Oza and Ors.

....Respondents

WITH

CIVIL APPLICATION No. 2152 OF 2015

IN

WRIT PETITION No. 2038 OF 2015

Niraj R. Desai and Ors.

....Applicants

In the matter between

Omprakash Vyas and Ors.

....Petitioners

Vs.

Manohar J. Oza and Ors.

....Respondents

Mr. V.S. Kapse a/w. Mr. S.R. Ingale for Petitioners

Mr. Aparaj J. Ninawe for Respondent Nos. 1 and 2

Mr. Rahul Karnik for Respondent No.7

Mr. Sameer Bhalekar for Applicant in CAW No. 2152 of 2015

CORAM: M.S.SANKLECHA, J.

DATE : 27th SEPTEMBER, 2017.

P.C:-

This petition under Article 227 of the Constitution of India challenges the order dated 19th January, 2015 passed by the Maharashtra State Co-operative Appellate Tribunal (Tribunal). By the impugned order dated 19th January, 2015, the appeal filed by the intervenors was allowed and consequently the award dated 3rd September, 2012 passed by the Co-operative Court on the basis of the consent terms dated 23rd March, 2007 was set aside. Besides the order dated 21st March, 2011 passed below Exhibits 17 and 18 being the application for intervention filed by Respondent Nos.1 and 2 herein which was rejected by the Co-operative Court was also set aside and intervention was allowed. All this resulted in the Tribunal remanding the issue for fresh consideration by the Co-operative Court.

2. On 28th April, 2015, this Court issued notice to the Respondents for admission of this petition. The above notice also put to notice the parties that the petition itself may be disposed of at the stage of admission. Besides, in the meantime, the proceedings before the trial Court i.e. Co-operative Court No. 4 on remand, were stayed.

3. The basic grievance of the Petitioners is that the impugned order dated 19th January, 2015, which allowed the intervenors' appeal was completely without jurisdiction. This for the reason that the order dated 21st November, 2011 passed below Exhibit '17' and '18' were subject matter of the revision filed by the intervenors to the Appellate Tribunal being Revision Application No. 1 of 2012 and by an order dated 17th August, 2012, the Tribunal dismissed these appeals from the order dated 21st November, 2011 passed below Exhibits '17' and '18'. In the face of the aforesaid order dated 17th August, 2012, the Petitioners' present appeal consequent to application for intervention before the Tribunal could not have been allowed by order dated 19th January, 2015. It was only on setting aside the order dated 21st November, 2011 passed below Exhibits '17' and '18' by the Tribunal in its order dated 19th January, 2015 that the intervenors could be heard with regard to its challenge to the award dated 3rd September, 2012 passed by the Co-operative Court.

4. One of the essential elements of rules of law is certainty and finality to a litigation. It is not open to the party to litigate on the same issue again and again till he gets a favourable order. Once the Co-ordinate bench of the Tribunal has already rejected the grievance of Respondent Nos.1 and 2, it is not open to a subsequent bench to sit in appeal over the

earlier bench in the absence of any reason to justify the same. In the present fact, the Petitioners' intervention application had been rejected by an order dated 21st November, 2011 of the Co-operative Court being orders made under Exhibits '17' and '18'. Being aggrieved by order dated 21st November, 2011 passed below Exhibits '17' and '18', the respondents filed a revision application before the Appellate Tribunal contesting the rejection of the intervention application. The Appellate Tribunal by its order dated 17th August, 2012 upheld the order dated 21st November, 2011 rejecting the application of Respondent Nos.1 and 2 to intervene in the dispute between Omprakash Bharti Estate and Ors. which includes the Petitioners herein who are added as Disputant No.3 in the dispute before the Co-operative Court. The intervenors have accepted the order dated 17th August, 2012 of the Tribunal. Thus the grievance of the petitioner appears justified.

5. Mr. Ninawe, learned counsel for Respondent Nos.1 and 2 has fairly stated that he is in no position to sustain the impugned order dated 19th July 2015. This is so as no challenge was preferred by the intervenors against the order dated 17th August, 2012 passed by the Tribunal.

6. In the above view, it was not open to the Tribunal to sit in the

appeal over an order dated 17th August, 2012 passed by its co-ordinate Bench and set it aside by reversing its findings / order upholding the dated 21st November, 2011 of the Co-operative Court. Once the order dated 21st November, 2011 passed by the Co-operative Court under Exhibits '17' and '18' could not have been set aside by the impugned order of the Tribunal then, there could not be any occasion for the Appellate Tribunal to entertain the objections of the Respondents herein to the award dated 3rd September, 2012 passed by the Co-operative Court on the basis of the consent terms.

7. This is a clear case of exercising jurisdiction by the Tribunal which is not vested in it viz. sitting in an appeal over the orders passed by its coordinate bench. In the above view, the writ petition is allowed. The impugned order dated 19th January, 2015 is quashed and set aside. The petition is allowed. No order as to costs.

8. In the above view, the civil application No. 443 of 2011 and 2152 of 2015 are also disposed of as infructuous.

(M. S. SANKLECHA,J.)

