

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

WRIT PETITION NO.2596 OF 2017

Arvind Bhagwan Kanegaonkar ... Petitioner
vs.
Polestar Realtors Private Limited & Anr. ... Respondents

Mr. Chirag Balsara a/w Mr. Aditya Deolekar and Ms. Ketaki Puli i/b
M/s. Diamondwala & Co. for the Petitioner.
Mr. Hemant Ingle i/b Mr. Prashant Goyal for the Respondent No.1.
Mr. Rajendra V. Pai i/b Mr. R.R. Sharma for the Respondent No.2.

Coram : **A.A.Sayed, J.**
Date : 3 March 2017

P.C. :

1 By this Writ Petition under Article 227 of the Constitution the Petitioner impugns the order dated 16 February 2017 passed by the Small Causes Court at Bombay (Bandra Branch) whereby the Application of the Petitioner/Original Applicant (Exhibit 22) for impleading him as party Defendant to the suit has been dismissed.

2 The Applicant is a member of the Respondent No.2 Society. The Respondent No.2 Society has 71 members. The suit in the Small Causes Court was essentially between the Respondent No.1/Original Plaintiff/Lessor and the Respondent No.2 Society/Original Defendant/Lessee. The Respondent No.1 has sought eviction of Respondent No.2 Society in respect of the suit land.

3 The learned Counsel for the Applicant submitted that the Respondent No.1/Original Plaintiff and the Respondent No.2 Society/Original Defendant in the T.E. & R Suit No.177/192 of 2014 are likely to file the Consent Terms before the Court of Small Causes tomorrow i.e. on 4 March 2017. He states that if the Consent Terms are allowed to be filed and an order is passed in terms thereof by the Court the rights of the Applicant in respect of his flat would be seriously affected. The learned Counsel submitted that the Consent Terms are collusive and would prejudice the rights of the Petitioner and therefore it was necessary that the Petitioner be made a party and be heard in the suit and the Small Causes Court had wrongly dismissed his Application. He submitted that the purported resolutions of the Respondent No.2 Society and the meetings were in contravention of the provisions of section 79A of the Maharashtra Co-operative Societies Act, 1960. He therefore urged that the Application of the Petitioner (Exhibit 22) is required to be allowed and the impugned order be set aside and further proceedings including taking on record of the Consent Terms be stayed.

4 Having heard the learned Counsel for the parties and on perusal of the impugned order, I am in agreement with the learned Trial Court Judge that the Applicant is not a necessary and proper party to the suit. The suit is filed by the Respondent No.1 as Lessor seeking eviction of

the Respondent No.2 Society as Lessee. The said suit is now being compromised by filing Consent Terms. The Petitioner cannot contribute in any manner to the issues raised in the suit. It is pointed out on behalf of the Respondents that a similar Application had been moved for intervention in the suit which was rejected by an order dated 16 February 2017 by the Small Causes Court and the said order was challenged in this Court in Writ Petition (Stamp) No.5179 of 2017. The learned Single Judge of this Court by order dated 23 February 2017 disposed of the Writ Petition and did not interfere with the order dated 16 February 2017 of the Small Causes Court. If the Petitioner is aggrieved by the Consent Terms including the resolutions passed by the Respondent No.2 Society, his remedy would lie elsewhere. No interference is warranted with the impugned order by this Court in the exercise of writ jurisdiction under Article 227 of the Constitution.

5 The Writ Petition is dismissed in limine. No order as to costs.

(A.A.Sayed, J.)