

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

WRIT PETITION NO. 4368 OF 2017

Dewan Niketan Premises Co-operative
Society Ltd.

...Petitioner

Versus

State Of Maharashtra And Ors.

...Respondents

Mr.Amol Tembe i/b Mr.Kishor Vishwanath Tembe for the Petitioner.

Ms.Veena Dewan Respondent No.4 in person present in Court.

Mr.S.H. Kankal, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

DATE : 20th SEPTEMBER 2017

ORAL JUDGMENT :

1. Not on board. Upon production, taken on board.
2. Heard Mr.Amol Tembe for the petitioner and Ms.Veena Dewan respondent No.4 in person.
3. The challenge in this petition is to the orders dated 15-04-2015 made by the Deputy Registrar of Co-operative Societies and order dated 15-02-2017 made by the Divisional Joint Registrar

(Revisional Authority) directing the petitioner-society to enroll Ms.Veena Dewan (respondent No.4) and her sister Ms.Madhu Abrol as members of the society.

4. Mr.Tembe, the learned counsel for the petitioner submits that in this case, there is no valid application made by Ms.Veena Dewan and Ms.Madhu Abrol seeking membership. In the absence of any such valid application form as prescribed under the bylaws, there was no obligation on the part of the petitioner society to enroll the two persons as members of the society.

5. Mr.Tembe submits that even this Court, being not fully satisfied as to whether Ms.Madhu Abrol have indeed applied to be enrolled as a member of the society had issued direction that Ms.Madhu Abrol files an affidavit in the matter. Mr.Tembe points out that Ms.Madhu Abrol has now, purportedly filed an affidavit dated 15th July 2017. Mr.Tembe submits that this affidavit bears no signature of Ms.Madhu Abrol, it contains only a thumb impression. Mr.Tembe also points out that on 24th July 2017 Ms.Madhu Abrol has addressed a letter to the society which bears her signature, whereas the latest affidavit, bears thumb impression. Mr.Tembe points out that there is no reason disclosed in the affidavit as to why

Ms.Madhu Abrol has put her thumb impression. No medical certificate has been annexed.

6. Further, Mr.Tembe points out that the Section Officer of this Court, before whom the affidavit has been sworn, merely says that the affidavit was read over but there is no endorsement that the same was explained to the deponent.

7. Mr.Tembe further states that Ms.Madhu Abrol has indicated her address at Flat No.16, Pushpanjali CHS, Sion, Tombay Road, Chambur. However, when members of the society visited this apartment, it was found that Ms.Madhu Abrol was actually admitted in BHM Health Care Hospital at Andheri.

8. For all these reasons, Mr.Tembe submits that the society was justified in not enrolling the said two persons as members and the two orders impugned in this petition are in excess of jurisdiction and may be set aside.

9. Ms Veena Deewan, senior citizen, who appears in person states that not only her sister Ms Madhu suffers from serious illness, but she herself, suffers from cancer. She points out that the

petitioner-society, being fully conscious of these facts, is attempting to take undue advantage of the situation and harass the two sisters. She submits that the petitioner-society, by raising every possible frivolous objection seeks to delay the enrollment of the two sisters as Members, so that the members of the Managing Committee of the Society, can appropriate the suit premises to themselves. There appears to be much substance in the contention of Ms.Veena Dewan.

10. In this case, there is absolutely no dispute that Shri.Bhimsen R. Dewan was the member of the society. There is also no dispute that Ms.Veena Dewan and Ms.Madhu Abrol are the daughters of Mr.Bhimsen Dewan. There is also no dispute that in terms of the law, the two daughters, succeed the interest of Mr.Bhimsen Dewan and accordingly, are very much entitled to claim the benefits of membership of the petitioner-society. It is not even the case of the petitioner-society at any stage that there is any serious or substantive objection to the enrollment of the two sisters as members of the society. The objections raised, at the highest are procedural and hyper technical. There is reason to believe that such hyper technical objections are being raised only in order to take advantage of the situation and to deprive the two sisters

membership, which, now, at least two authorities have directed the petitioner society to award.

11. In view of the insistence on the part of the society that the application seeking membership was not signed by Ms.Madhu Abrol, this Court, directed Ms.Madhu Abrol to file an affidavit clarifying whether she had also applied for membership along with her sister Ms.Veena Dewan. In compliance, Ms.Madhu, has filed an affidavit which is sworn before the Section Officer of this Court. If the, petitioner-society, was genuinely interested in ensuring procedural compliances, this should have been the end of the matter. However, as is reflected from the submission of Mr.Tembe the society, chooses to raise further objections as regards this affidavit and on the said basis prolong and increase the agony of the two sisters.

12. Mr.Tembe submits that Ms.Madhu in her letter dated 24th July 2017 addressed to the society had put her signature on the same. Mr.Tembe reasons that the thumb impression on the affidavit is therefore suspicious. He submits that there is no endorsement that the Section Officer of this Court has explained to her contents of the affidavit. The contents state that the affidavit has been read

over.

13. Mr.Tembe's contentions cannot be accepted in the facts and circumstances of the present case. In first place, there is really no material on record that the letter dated 24th July 2017 was in fact written by Ms.Madhu. Secondly, the affidavit has been sworn before the Section Officer of this Court, who has, verified the identity of the affiant. There are no clear cut allegations that somebody other than Ms.Madhu Abrol has sworn the affidavit before the Section Officer of this Court. In the affidavit itself it is stated that the affiant has enclosed her Adhar Card copy and BARC Life Member Health Card. In fact xerox copies of these two documents are appended to the affidavit. Ms.Madhu Abrol has been identified by Ms.Veena Dewan, her sister and respondent No.4 in the present petition. The Section Officer has recorded that he personally knows Ms.Veena Dewan and therefore, he has accepted the identification by Ms.Veena Dewan.

14. That apart, Mr.Tembe submitted that the members of the Managing Committee of the Society actually visited the address which Ms.Madhu Abrol has indicated in her affidavit and obtained information that she is presently admitted at Health Care Center at

Andheri. Mr.Tembe, sought leave to produce on record details of even the room number in which Ms.Madhu Abrol is presently admitted. Mr.Tembe submits that this is yet another cause for suspicion.

15. The contention of the petitioner-society apart from being frivolous, depicts complete lack of sensitivity. Ms.Veena Dewan points out that her sister Ms.Madhu Abrol is also extremely ill and therefore, admitted at a Health Care Center. This explains the thumb impression on the affidavit. There is no merit in the hyper technical contention that the Section Officer has merely stated that the affidavit was read over before Ms.Madhu Abrol but not explained to her. The petitioner-society, in the facts and circumstances of the present case, cannot be permitted to raise such frivolous objections.

16. In this case, it is not as if Ms.Veena Dewan has applied for membership solely for herself. She has applied for joint membership along with her sister. Both the sisters had offered indemnity. This is more than sufficient compliance. The members of Managing Committee of the Society are not at all justified in raising doubts and objections of this nature only with a view to deny

two sisters the benefits of the memberships. The two authorities have concurrently held against the society and there is absolutely no case made out to interfere with the impugned orders.

17. The conduct of the petitioner also does not entitle the petitioner to any equitable relief. On the contrary, this is a fit case for dismissal of the petition, with exemplary costs. Such costs have to be recovered from the members of the Managing Committee of the Society who are responsible for raising such frivolous objections to the enrollment of the two sisters as members, despite full knowledge that the two sisters are aged and are suffering from serious ailments. This petition is accordingly dismissed with costs assessed at Rs.1 lakh i.e. Rs.50,000/- to Ms Dewan and balance Rs.50,000/- to Ms Abrol.

18. The petitioner-society to pay costs of Rs.50,000/- to Ms.Veena Dewan within a period of four weeks from today by means of Demand Draft.

19. The petitioner-society is further directed to pay costs of Rs.50,000/- to Ms.Madhu Abrol. Such costs shall be paid to Ms.Madhu Abrol either at address indicated by her in her affidavit

or at the Health Care Center at Andheri. The Managing Committee Members of the petitioner-society have already taken the trouble of finding out the address details where the Ms.Madhu Abrol has been admitted. This exercise must be completed within four weeks from today.

20. The petitioner-society is further directed to enroll Ms.Veena Dewan and Ms.Madhu Abrol as members of the society and comply with directions in the impugned orders within a period of two weeks from today.

21. Though, initially, the amount of costs should be borne by the petitioner-society, later on, the society, should recover such costs from each of the members of the Managing Committee, so that, the other members of the society, do not unnecessarily suffer on account of the members of the Managing Committee to fomenting and prosecuting such frivolous litigations. The Registrar of Co-operative Societies to ensure that the order, not only for payment of cost to the two sisters but further, recovery of such costs from the members of the Managing Committee is complied with.

22. Mr.Anup Sharma, the Chair person of the society is

directed to file an affidavit in this Court as regards the compliance of this order including in particular, compliance with regard to the direction for payment of costs.

23. If for any reason, other than interim reliefs from the Hon'ble Apex Court, this order is not complied with, the Chair person to remain personally present in the Court after six weeks i.e. on 24th November 2017.

24. The petition is dismissed with costs as aforesaid.

(M. S. SONAK, J.)