

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

**CIVIL APPLICATION NO. 1805 OF 2017
IN
WRIT PETITION NO. 10681 OF 2015**

Kohinoor Co-operative Housing Society Ltd. ..Vs.. The Deputy Registrar Co-operative Societies & Ors.

Office Notes, Office Memorandum of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's orders
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Mr. Vishal Kanade a/w Hemali Kurne I/by.
Ajay Law Associates for Applicant.
Mr. Rajesh P Behare for Petitioner.

CORAM : K. K. TATED, J.
DATE : AUGUST 01, 2017.

P.C. :

- . Heard learned Counsel for parties.
2. This application is preferred by the original Respondent No.3 seeking direction to the Petitioner- society to allow them to install the electricity meter for their shop Nos. A-1, A-2, A-4 and B-3 in meter room of Kohinoor Co-operative Housing Society Limited, Vasudeo Balwant Phadke Marg, Opp. Datta Prasad Society, Naupada, Thane (West).
3. The learned Counsel Mr. Kanade for Applicant submit that the Petitioner by the

present Petition challenges Judgment and order dated 30th July, 2014 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai in Revision Application no. 34 of 2012 and order dated 24th August, 2015 passed by the Deputy Registrar Co-operative Societies, Thane City, Thane directing the Petitioner-Society to register the Applicant's name as a member of the Society and issue appropriate share certificate.

4. The learned Counsel for Applicant submit that the writ petition is admitted by this Court (Coram : Smt. R. P. SondurBaldota, J.) by order dated 6th June, 2016 and granted interim relief in terms of prayer clause (c) which read thus :

“(c) That pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased to stay the execution, implementation and operation of the Judgment and order dated 30.7.2014 passed by Respondent No.2 in Revision Application No. 34 of 2012 and order dated 24.8.2015 passed by Respondent No. 1 at Exhibit – I and J respectively.”

5. The learned Counsel for Applicant submit that during the pendency of the said Writ Petition they have preferred Civil Application for various reliefs before this Court. He submits that after hearing both the sides, this Court (Coram : R. M. Savant, J.) by order dated 9th January, 2017 partly allowed the Civil Application. This Court granted following relief in those Civil Applications, which read thus :

“(i) The Petitioner society without prejudice to its rights and contentions in the above Petitions may issue notices of the general body meetings or special general body meetings of the society to the Applicant herein.

(ii) The Applicant herein would be entitled to attend the general body meetings of the society, participate in the discussion that would take in the said meetings as also would be entitled to vote. However, his vote would be recorded if given by show of hands and kept separately and would not be taken into consideration for deciding the

number of votes in favour or against any resolution.

(iii) The Petitioner society without prejudice to its rights and contentions would also issue maintenance bills to the Applicant and the Applicant would also pay the same without prejudice to its rights and contentions in the above Petition.

(iv) It is made clear that none of the aforesaid would create any equities in favour of the Applicant.

(v) In the event any decision is taken by the society as regards redevelopment and the Applicant is held not to be entitled to participate in the said redevelopment, it would be open for the Applicant to adopt such proceedings as are permissible in law to assail the decision of the society.

(vi) If the Applicant applies for copies of the minutes of the meeting of the general body meetings which have taken place in the past, then the Petitioner society may consider

granting the same, as required to be done in respect of a regular member and also furnish copies of the minutes of the meetings held in future if applied for.

(vii) Needless to state that in so far as the prayers which are not pressed, the Applicant may adopt such remedies as are available in law for seeking the said prayers.

(viii) It is clarified that interim reliefs in terms of prayer clause (c) would continue to operate.

4. The Civil Applications to accordingly stand disposed of.”

6. The learned Counsel for Applicant submit that thereafter they made application to the Maharashtra State Electricity Distribution Company Limited for installation of electricity meter in respect of their shop premises. He submits that at that time Petitioner-society restrained the concerned Officers of the electricity department from installation of the electricity meters by not providing the access of the meter room.

7. In support of this contention, the learned Counsel appearing on behalf of Applicant relies on the letter dated 20th April,

2017 issued by the Maharashtra State Electricity Distribution Company Limited [Exhibit "E"]. He submits that as on today they are using those shops without any electricity supply.

8. The learned Counsel for Applicant submit that this Court (Coram : R. M. Savant, J.) by order dated 9th January, 2017 directed the Petitioner-society to issue the maintenance bill in the name of Applicant. Not only that, this Court also permitted the Applicant to attend the annual general meeting of the society. He submits that as per his instructions there is no outstanding dues of maintenance charges on their part, in spite of that, the society is preventing them from installing electricity meter for taking connection to their shop premises. Hence, they preferred present Civil Application for directing Petitioner-society to allow the Petitioner-Applicant to install the electricity meter in meter room for taking electricity connection in respect of Shop No. A-1, A-2, A-4 and B-3.

9. The learned Counsel for Applicant submit that in the interest of justice, this Hon'ble Court be pleased to allow this Civil Application, because as on today they are

paying the maintenance charges to the society and on the other hand Society is preventing them to take the electricity for their shop premises.

10. On the other hand, the learned Counsel Mr. Behere appearing on behalf of Petitioner-society vehemently opposed the present Civil Application. They have filed Affidavit-in-reply also.

11. The learned Counsel for Petitioner-society submit that Writ Petition is already admitted by this Court and interim relief is granted. Therefore, there is no question of allowing the present Civil Application.

12. The learned Counsel for Petitioner-Society submit that the Applicant has already granted liberty to take appropriate steps for their grievance, therefore, there is no question preferring the present Civil Application. He further submit that Petitioner-society by their letter dated 20th April, 2017 informed the true facts to the Assistant Executive Engineer, Maharashtra State Electricity Distribution Company Limited, Thane (W) where the Applicant has made complaint against the Petitioner-society. He further submits that in any case as on today the Applicant is not a member of the Society, therefore, there is no

question of allowing them to install the electricity meter for taking the electricity connection in respect of those shops. Therefore, be pleased to dismiss the Civil Application with costs.

13. I have heard both the Counsel at length.

14. During the course of argument, learned Counsel appearing on behalf of Applicant submit that he received instructions from his client that at present he is not pressing prayer clause (b). To that effect he seeks liberty to take appropriate proceedings.

15. It is to be noted that the Applicant is in possession of shops in the Petitioner-Society. Apart from that, this Court (Coram : R. M. Savant, J.) by order dated 9th January, 2017 directed the Society to allow the Applicant to attend the annual general meeting as well as to issue maintenance charges bill in favour of Applicant.

16. It is to be noted that this Court has already taken view that the Applicant is entitled to use those shops for his business purpose. Hence, he required electricity connection and for that purpose, he has to install electricity meter. In spite of the order passed by this Court dated 9th January, 2017

in Civil Application No. 3031 of 2016 and other Civil Applications, Petitioner-Society is preventing the Applicant from installing electricity meter in Society's meter room. It is to be noted that in a Society meter room is always for the benefit of the members and/or occupant of building-Society. It cannot restraint member or occupant from taking electricity connection.

17. Therefore, I am of the view that Applicant has made out the case for allowing Civil Application in terms of prayer clause (a) which read thus :

(a) Pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased to order and direct the Petitioner Society to allow access to the meter room to the Electricity Authority i.e. Maharashtra State Electricity Distribution Company Limited (MSEDCL) to enable them to install new electric meters to Shop No. A-1 & A-2, A-4 and B-3.”

(b) The Petitioner-society is directed to issue no objection certificate in favour of the Applicant for installation of electricity meter in meter room and the access to the Authorized Officer of Maharashtra State Electricity Distribution Company Limited

within two weeks from the receipt of the copy of this order.

(c) The Petitioner-society is restrained by an order of injunction from obstructing the Applicant from taking the electricity connection for shop Nos. A-1, A-2, A-4 and B-3 and installation of electricity meters in meter room of the Society by making appropriate application to the electricity Board.

(d) Civil Application stand disposed of accordingly.

(K.K.TATED, J.)