

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

WRIT PETITION NO.7561 OF 2013

Shri Shevantilal Chimanlal Shah

...Petitioner

Versus

Lijjat Godavari Co-op. Housing
Society Ltd. & Anr.

...Respondents

.....
Mrs.Pranali Kakade for the Petitioner.
Mr.Pawan Pandey i/b. Clayderman Co. for Respondent No.1.
Mr.Rohan S. Sawant, AGP for Respondent No.2.
Mr.Shevantilal Chimanlal Shah (Petitioner-in-person) present.
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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 11, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 26.07.2013 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai in Appeal No. 45 of 2013.
3. It is the case of the respondent-society that they had filed a case No. CC-IV-220 of 1988 against the petitioner for recovery of amount alongwith possession of the flat of the petitioner before the Co-operative

Court No. IV, Mumbai. The petitioner was earlier member of their society and owner of Flat No. 5 C-Wing. However, he was expelled from the membership of the society and the said order was confirmed by the Appellate Court. The petitioner did not pay the maintenance charges of the society and therefore, the respondent-society had filed a case before the Co-operative Court No. IV, Mumbai. The said case was decided in favour of the respondent-society and the petitioner was directed to pay the maintenance charges. The said order was challenged by the petitioner/original opponent before the Maharashtra State Co-operative Appellate Court at Mumbai. However, the order passed by the learned Judge, Co-operative Court No. IV, was maintained by the Appellate Court. Therefore, this Writ Petition is filed by the petitioner/original opponent against the respondent/society.

4. The learned counsel for the petitioner submits that the impugned order passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai is to be set aside. The petitioner is residing in the society since last 30 years and he is occupying the said flat since then. She further submits that the issue is to be considered on humanitarian ground and the order of the Co-operative Court is to be set aside. She further submits that the petitioner has no other residence and he is residing there alongwith his family. She further

submits that he is ready to pay the maintenance charges hereafter and also ready to deposit some portion of the arrears.

5. The learned counsel for the respondent-society submits that the respondent-society had filed a case No. CCIV/220 of 1988 against the petitioner/opponent for possession and the recovery of dues of the outgoings and mesne profits. The learned Judge, Co-operative Court No. IV, Mumbai has held that the opponent is duly expelled from the membership of the society and he is unauthorizedly occupying the said premises. The Co-operative Court has further held that in view of due expulsion according to the provisions of the Act, Rules and the Bye-Laws, the opponent has no right to occupy the premises and he is to quit the same immediately. The said dispute was allowed and the Co-operative Court directed the opponent to quit, vacate and deliver peaceful and vacant possession of Flat No. 5, 'C' wing of the building and also directed to pay the arrears of dues to the disputant society.

6. As per Bye-Law 54 of Co-operative Housing Societies bye-laws, a Member who has been duly expelled from the membership of a Housing Society, is not entitled to continue in occupation of the flat and is to hand over peaceful, physical possession of the same.

7. The learned counsel for the petitioner informs the Court that the petitioner, who is present in Court, is ready to deposit the arrears of Rs. 7,53,132/- towards maintenance to the Society by 15.08.2017. The submission of the learned counsel is recorded, however, till today, the petitioner has not paid any amount towards arrears to show his bonafides. If the petitioner wants to pay the arrears and the respondent-society wants to settled the matter with the petitioner, then it is between the society and the petitioner. However, on merits, no illegality is found with the orders of the Cooperative Court as also the Cooperative Appellate Court by virtue of Bye-Law 54 of the Bye-Law of Cooperative Housing Societies. Writ Petition is therefore dismissed.

(MRIDULA BHATKAR, J.)