

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

WRIT PETITION NO. 1052 OF 2015

Smt. Arati Prabhakar Gore

.. Petitioner

v/s.

Amrutkumbh CHS Ltd. & Anr.

.. Respondents

Mr. V.S. Kapse i/b Nikhil S. Rajshirke for the petitioner

Mr. Rahul Nerlekar for respondent no.1

Mr. A.R. Matkari, AGP for respondent no.3

CORAM : M.S. SANKLECHA, J.

DATED : 22nd AUGUST, 2017

P.C.

1. This petition under Article 227 of the Constitution of India challenges the order dated 21st January, 2014 passed by the Maharashtra State Co-operative Appellate Court, Mumbai.

2. By the impugned order dated 21st January, 2014, the revision application filed by the respondent no.1 Co-operative Society against the order dated 7th January, 2013 of the Co-operative Court, was allowed. The Co-operative Court had rejected the respondent no.1 Society's application to file written statement made in view of the

dispute being amended by the petitioner in having added respondent no.2 (opponent no.2) herein. However, the impugned order allowed the revision application to the extent it directed the trial Court to consider the reply of the respondent no.1 to an interim application of the petitioner, as its written statement while not disturbing order dated 21st January, 2014 of the Co-operative Court of not permitting the respondent to file a written statement.

3. The grievance of the petitioner is that the impugned order dated 21st January, 2014 allowing the interim application to be treated as written statement brings to a naught / effaces / sets aside an earlier order dated 9th July, 2017 passed by the very same Authority i.e. Appellate Tribunal, which had rejected the respondent no.1 Society's application to file a written statement and set aside an ex-parte order dated 13th January, 2010. It is submitted that a co-ordinate Authority cannot ignore the earlier order passed on the same issue, rejecting an application for filing a written statement without having specifically dealt with the earlier order to come to a different conclusion.

4. I find that on 13th January, 2010 the Co-operative Court had passed an order to proceed ex-parte without written statement against the respondent no.1 Society. Thereafter, the respondent no.1 society made an application on 29th October 2010 to the extent of filing the written statement came to be rejected by order dated 18th June, 2011 of the Co-operative Court. In appeal, the Appellate Tribunal upheld the order dated 18th June, 2011 prohibiting the respondent no.1 from filing a written statement.

5. However, thereafter the petitioner amended its dispute so as to add respondent no.2 herein as a disputant no.2 in the proceedings before the Co-operative Court. This led the respondent no.2 to file an application to file a written statement in view of the dispute itself being amended by addition of respondent no.2 in the array of parties. The Co-operative Court by order dated 7th January, 2013 rejected the same. The respondent no.1 filed revision application to the appellate Tribunal. It was during the proceedings before the appellate Tribunal that the respondent no.1 made an alternative prayer to the effect that its reply to the interim application should be treated as written statement.

6. In the context of the above facts, the primary grievance of the petitioner that the impugned order dated 21st January, 2014 could not have been contrary to the earlier order dated 18th October, 2011 passed by the Appellate Tribunal, refusing the application of respondent no.2 to file its written statement is not acceptable for two reasons. Firstly, in the earlier proceedings, which were taken by the respondent no.2 before the Co-operative Court, no application was made to consider the respondent no.1 Society's reply to interim application as a written statement. It was only in the present proceedings before the Appellate Tribunal that such a submission was made and the impugned order accepted the same on consideration of all the facts and particularly taking into account that it would have been open for the respondent no.2 herein to have file a pursis taking a stand that their reply to the interim application be treated as written statement and it may have in all likelihood,be accepted at that time. Besides the trigger to make the application before the Co-operative Court leading to its order dated 7th January, 2013 was the addition of respondent no.2 as disputant no.2 before the trial Court. Thus, there is a change in circumstance viz.

different relief sought before the Appellate Tribunal leading in the impugned order dated 21st January, 2014.

7. The next grievance on behalf of the petitioner that if the application as canvassed is allowed, it would lead to the clock being set back. This would require re-framing of issues which would cause prejudice to the petitioner as it would delay the proceedings. Mr. Nerlekar, learned Counsel for the respondent no.1 society, on instructions, states that no application for framing fresh issues would be filed on their behalf. It is submitted that the issues with which the Co-operative Court is presently concerned with, does cover the entire controversy between the parties. In the above view, the prejudice of which the petitioner was apprehensive, does not survive.

8. In the above facts and circumstances, the view taken by the Tribunal in the present facts is a view taken to advance substantial justice between the parties. Therefore, in these facts, there is no reason to exercise my supervisory jurisdiction under Article 227 of the Constitution of India with regard to the impugned order dated 21st January, 2014.

9. However, it is clarified that as the petitioner has already filed its affidavit evidence without taking into account the reply to the interim application filed by the respondent no.1, it would be open to the petitioner to file an additional affidavit. This would cause no prejudice, as I am informed that the cross-examination has just commenced this morning. Therefore, the Appellate Court would permit the petitioner, if it so desires, to file any additional affidavit before proceeding with the matter.

10. In the above view, the petition is dismissed with the aforesaid directions. No order as to costs.

(M.S. SANKLECHA, J.)