

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

CIVIL APPLICATION NO. 115 OF 2017

IN

WRIT PETITION NO. 9131 OF 2015

Light up India Private Limited ..Vs.. Laxmikriti Industrial Co-operative Society & Anr.

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. S. C. Naidu a/w T. R. Yadav & Aniketh Poojari I/by. C. R. Naidu & Co. for Applicant/Petitioner.

Mr. Darshit Jain I/by. Girish U.G. - Menon for Respondent No.1.

Mr. S. D. Rayrikar, AGP for State/Respondent No.2.

CORAM : K. K. TATED, J.

DATE : JUNE 14, 2017.

P.C. :

1. Heard learned Counsel for parties.

2. This application is preferred by Petitioner for taking on record and accepting the report of the Chartered Accountant dated 22nd November, 2016. The Applicant also seeking direction against the Society to reinstate the Applicant as a Member of the Society and remove its name from the list of defaulters in respect of Gala No. 11A and 11J.

The Applicant also claiming other reliefs in the present Civil Application as per prayer clauses (c) to (h) which read thus :

“(c) The Report of the Chartered Accountant dated 22nd November 2016 filed with the office of this Hon'ble High Court under cover of letter bearing No.NBS/16-17/G-44 be accepted;

(d) The Society be forthwith directed to forthwith reinstate the Applicant as member of the Society and remove its name from the list of defaulters in respect of Gala Nos.11A and 11J;

(e) Forthwith issue future maintenance bills in Gala No.11A and 11J in the name of Applicants and receive payment in discharge thereof from the Applicants and issue receipt in acknowledgement of payment made by Applicants;

(f) To endorse the name of the Applicant (Petitioners) on the (i) original Share Certificate No.10 comprising distinctive share certificate No.56 to 60 (both inclusive) and; (ii) original Share Certificate No.11 comprising distinctive share certificate No.61 to 65 (both inclusive) and handover both the share certificates to the Applicants (Petitioners) within a period of 15 days from the date of order;

(g) In the alternate to prayer clause (d) and in the further event of the original share certificate not traceable or lost by the office bearers of the society then the Respondent No.1 to issue duplicate share certificate in the name of Applicant in place and stead of original share certificate bearing No.10 comprising distinctive share Nos. 56 to 60 and share certificate No.11 comprising distinctive share Nos.61 to 65 within the period of 15 days from the date of order.

(h) That pending the hearing and final disposal of this Application, ad-interim/interim reliefs in terms of prayer clauses (e) (f) or (g) above”

3. In view of the order passed by this Court on 20th September, 2016 in Civil Application (St) No. 23684 of 2016, the commissioner M/s N. B. Shah & Associates, Chartered Accountants submitted the report dated 22nd November 2016. As per the said report, no amount is payable by the Applicant – M/s. Light Up India Private Limited to the Respondent – Society i.e. Laxmikirti Industrial Co-operative Society Limited. On the contrary, an amount of Rs. 35,693.90 Ps. remains to be credited to the Applicant's account.

4. The learned Counsel Mr. S. C. Naidu appearing on behalf of Applicant submit that the Respondent – Society filed their reply in the present Civil Application. He submit that the Society has raised objection on Clause Nos. 2 and 4 of the Report, which read thus :

“2. Transfer Charges :

(a) *An amount of Rs. 2.00 Lacs was paid by the Petitioner at the time of purchase of the property on 1st July 2001. This amount was paid along with the transfer documents submitted to the society.*

(b) *However subsequently, further amount of Rs. 50,000/- @ Rs. 25,000/- per*

unit was paid by the Petitioner towards transfer charges as per the directives of the Deputy Registrar of Co-operative Societies, Mumbai.

(c) Both the amounts have been received & acknowledged by the Respondent Society.

4. Legal & Professional Charges

i. The society has included in their quarterly maintenance bills raised on the Petitioner an amount of Rs. 3,61,998/- towards the legal and professional charges as per the following details:

<u>Sr.No.</u>	<u>Bill Date</u>	<u>Amount</u>
1.	01.04.2003	35,000
2.	01.07.2003	47,500
3.	01.10.2003	1,00,000
4.	01.01.2004	25,000
5.	01.04.2004	59,749
6.	01.07.2004	45,000
7.	01.10.2004	15,000
8.	01.01.2005	14,749
9.	01.04.2008	20,000
	Total	3,61,998

ii. During the verification/discussion at the society the legal & professional charges debited to the Petitioner were reviewed. The Respondent society was unable to submit the relevant supporting bills with the detail of nature of payments. It was submitted by the Respondent society that the relevant records were not available due to a court order dt. 31.07.2014.

iii. It was also submitted by the Petitioner that on various hearings in the Court nobody from the society had attended.

iv. Further the Petitioner also submitted that legal & professional charges for all the legal matters have to be a part of service charges and cannot be specifically charged to a member unless there is specific order from the competent court to this effect.

v. *The petitioner further submitted the details of hearings for various Court cases where no advocate had represented the society.*

Observations

In view of the above & nature of expenses and the provisions of the Co-operative Societies Act/rules, that all the legal and professional expenses should be a part of the common service charges being charged to all the members of the society, we are of the opinion that the same cannot be specifically charged to the Petitioners unless there is a specific Court order and therefore have not been included in the amount receivable from the Petitioner.”

5. The learned Counsel for Applicant submit that the commissioner recorded in the report that Society failed and neglected to place on record any document to show that the Applicant paid sum of Rs. 2,00,000/- towards the donation. He submits that Society in their letter dated 7th May, 2002 specifically admitted that no transfer fees was collected by them from the Applicants. The said letter dated 7th May, 2002 read thus :

“ we have to inform you that you have failed to obtain No Objection Certificate from the society for transfer of gala. Further more your had outstanding dues payable to the society. The papers forwarded by you are incomplete and doubtful. The society therefore has asked to resubmit the application for membership made by light up India.

We say that the amount paid by you to the society is adjusted towards outgoings

payable to the society, and no transfer fee is collected from you. The amount standing to your credit will be adjusted in future maintenance and other charges payable to the society.

All these facts have been brought to the knowledge of the Deputy Registrar at the time of hearing and you are requested to comply with the required amount mentioned in our letter dated 6/2/2002.”

6. The learned Counsel for Applicant submit that though the society in the reply stated that the Applicant paid the said amount of Rs. 2,00,000/- voluntarily and same was adjust in the Applicant's account, the Society failed and neglected to place on record any document to that effect. Hence, there is no question of accepting the objection raised by the learned Counsel for the Society in respect of clause no.2 of the report i.e. “Transfer Charges”.

7. The learned Counsel for Applicant submit that Applicant actually paid a sum of Rs. 25,000/- per unit to this Society towards the transfer charges as directed by the Deputy Registrar of Co-operative Societies Limited by the order dated 17th October, 2002.

8. The learned Counsel Mr. Naidu for Applicant submit that though the Society raised the bill of Rs. 3,61,998/- towards

payment of legal and professional charges of Advocate, they failed and neglected to place on record any documents to that effect. He submit that the Commissioner's Report recorded in para 4 that Society is unable to submit relevant details of the nature of payments of the various Advocates. Therefore, those amount cannot be considered as due and payable by the Applicant. It is also stated in para 4 (iv) that the legal and professional charges for all the legal matters have to be a part of service charges and cannot be specifically charged to a particular member unless there is specific order from the competent court to that effect. As the Society failed and neglected to place on record sufficient document to that effect, therefore, there is no question of entertaining the Respondent-Society's objection to the report dated 22nd November, 2016 file by M/s. N. B. Shah & Associates, Chartered Accountants.

9. The learned Counsel for Applicant submit that there is specific observation in the report that Society has submitted incorrect statement of outstanding in Para 6 (A) which read thus :

“6(A) We observe that the society has submitted incorrect statement of outstanding.

*Their first statement of outstanding submitted on 07.11.2016 showed an outstanding of Rs. 22,17,696.10 whereas even after the waiver of NOC charges & the interest thereon, instead of decreasing, it increased to Rs. 28,04,825.31 i.e. an increase of Rs.5,87,129.21. We had requested them to file revised corrected statement of outstanding but did not receive the same till date. A copy of our mail dt. 17.11.2016 addressed to the Respondent society is annexed herewith as **Annexure-E.**”*

10. The learned Counsel for Applicant submit that inspite of that, Society at the time of issuing the maintenance bill, shows the Applicant as a defaulter in respect of Gala No.11A and 11J. Hence, the Society may be directed to remove the Applicant's name from the list of defaulter in respect of the Gala No.11A and 11J.

11. The learned Counsel for Applicant submit that as on today Society those they are paying current maintenance bills in respect of Gala No.11A and 11J regularly, Society is showing them as defaulter. Hence, the Society may be directed to issue the Applicant's future maintenance bill in respect of Gala No.11A and 11J in the name of Applicant removing the word “defaulter” in discharge thereof showing the name of Applicant as defaulter.

12. The learned Counsel Mr. Naidu for Applicant at the time of argument made a statement before this Court that at present Applicant is not pressing for prayer clause (f) and (g). Statement is accepted.

13. On the other hand, the learned Counsel Mr. Jain appearing on behalf of Respondent – Society vehemently submit that report submitted by the Commissioner is contrary to the documents on record. He submit that a sum of Rs. 2,00,000/- was paid by the Applicant towards clearance of earlier maintenance charges of the society. The same was not considered by the commissioner. He further submit that though the society specifically pointed out to the commissioner that they paid a sum of Rs. 3,69,991/- to the various Advocates for the litigation, but the same was not considered by him. He further submitted that because of the Applicant's litigation, Society have been incurred the said amount. Hence, the same is required to be recovered from the Applicant only.

14. The learned Counsel for Society submit that in respect of the dispute between the Societies and the Applicant, this Court (Coram : Smt. R. P. SondurBaldota, J.) passed order on 31st July, 2014 in Civil Revision

Application No. 352 of 2014 and restrained the Society access to the relevant documents. Therefore, it remains on their part to place on record all those documents before the commissioner. On the basis of these submissions, the learned Counsel Mr. Jain for Respondent-Society submit that there is no substance in the present Civil Application and same is required to be set-aside.

15. I heard both the sides.

16. Bare reading of the report submitted by the commissioner shows that the society failed to produce on record any documentary evidence to show that the Applicant deposited a sum of Rs. 2,00,000/- with them either towards the donation and/or payment of maintenance charges in respect of the Gala Nos. 11A and 11J when the earlier owner was occupying the same. Therefore, it is difficult to accept the contention raised by the Advocate appearing on behalf of Respondent – Society that the said amount was paid by the Applicant towards the maintenance charges of earlier owner.

17. It is to be noted that as per the Maharashtra Co-operative Societies Act it is mandatory on the part of Society to appoint the statutory auditor and audit their amounts.

In spite of that provision, the Society failed and neglected to place on record any document and Audit Report to show that the Applicant paid the said sum of Rs. 2,00,000/- towards transfer charges and/or donation.

18. Though the Society submitted before the commissioner that they paid a sum of Rs. 3,61,998/- to various Advocates in respect of the litigation initiated by the Applicant, they failed and neglected to place on record any documentary evidence to that effect. Being a Society it is governed by the Maharashtra Co-operative Societies Act, it is mandatory on their part before making any payment they have to verify the bills, vouchers and follow up the procedure as prescribed by the law. The same is not pointed out by the Society in support of their case. Hence, the Commissioner's report rejected Society's contention that they paid a sum of Rs. 3,61,998/- to the various Lawyers towards the litigation, prima facie seems to be corrected.

19. Considering these facts, I am of the opinion that Applicant has made out the case for partly allowing the present Civil Application. Hence, the following order.

ORDER

(A) The report submitted by the Chartered Accountant dated 22nd November, 2016 is accepted.

(B) If the Respondent - Society get the access to the documents as per orders, if any, passed in Civil Application No. 352 of 2014, liberty is granted to them to take out appropriate proceedings for their grievance. That will be decided on its own merits.

(C) The Respondent – Society is directed to remove the name of Applicant from the list of defaulter in respect of Gala Nos.11A and 11J forthwith.

(D) Respondent – Society is directed to issue future maintenance bills in respect of 11A and 11J in the name of Applicant without showing his name as a defaulter.

(E) Liberty is granted to the Applicant to take out appropriate proceedings for the prayer clause (f) and (g) and/or raise at the time of final hearing of Writ Petition.

(F) Civil Application stand disposed of accordingly.

(K.K.TATED, J.)