

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

**WRIT PETITION NO.1123 OF 2017**

**Mr. Ravi Parshuram Patil**

**..Petitioner**

**Versus**

**Om Parshuram Co-operative Housing  
Society and others**

**..Respondents**

**Mr. Milind Parab i/by Milind Parab & Associates for the Petitioner.**

**CORAM : R. M. SAVANT, J.**

**DATE : 14<sup>th</sup> FEBRUARY, 2017**

**PC.**

1           The writ jurisdiction of this Court is invoked against the order dated 07.10.2016 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 20.03.2015 passed by the Co-operative Court came to be confirmed. The Petitioner also challenges the order dated 07.12.2016 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, by which order, the Review Application No.09 of 2016 filed by the Petitioner seeking review of the order dated 07.10.2016 came to be dismissed.

2           The Petitioner herein has purchased flat No.B-303 on the 3<sup>rd</sup>

floor of the 'B' wing of the building of the Respondent No.1 society. The said purchase by the Petitioner was by agreement dated 09.07.1998. The Respondent No.1 society filed the instant dispute seeking reliefs inter-alia in respect of the door which the Petitioner has opened from his flat No.B-303, which door is opening to the terrace of the 'C' wing of the building of the Respondent society. The said relief was sought on the basis that the Petitioner could not have opened a door to the terrace of the 'C' wing as that was not part of the original sanctioned plans. It was also the case of the disputant i.e. Respondent No.1 herein that the Petitioner has kept articles on the terrace of the 'C' wing as a result of which the members of the 'C' wing are facing difficulty in using the terrace.

3           In the said dispute, a written statement came to be filed by the Petitioner wherein diverse defences were taken including the defence of questioning the jurisdiction of the Co-operative Court of entertaining the dispute and also the ground of limitation was raised by the Petitioner on the ground that the dispute was filed in the year 2012, whereas the door opening to the terrace of the 'C' wing of the society is in use since the last 13 to 14 years. On the basis of the pleadings, the Trial Court i.e. the Co-operative Court had framed issues. The Trial Court on the basis of the said issues adjudicated upon the said dispute and passed an Award in favour of the Respondent No.1 society and thereby declared that the door

opening to the terrace of the 'C' wing from the flat of the Petitioner is illegal and therefore directed the Petitioner to remove the said door and close the wall of his flat facing towards the terrace of the 'C' wing. The same was done by the Co-operative Court by judgment and order dated 20.03.2015.

4           The Petitioner aggrieved by the said judgment and order dated 20.03.2015 passed by the Co-operative Court challenged the same by way of Appeal No.30 of 2015 before the Co-operative Appellate Court. The Petitioner it seems made a grievance about the issue of jurisdiction and limitation, being not framed by the Trial Court. The Co-operative Appellate Court accepted the said grievance of the Petitioner and by its order dated 28.08.2015 set aside the judgment and order dated 20.03.2015 passed by the Co-operative Court and remanded the matter back to the Co-operative Court with a direction that the Co-operative Court to frame the issues as to its jurisdiction as also limitation and thereafter decide the dispute.

5           On remand the Co-operative Court framed the said two additional issues. The Co-operative Court thereafter by judgment and order dated 22.02.2016 allowed the dispute and passed an Award in favour of the Respondent No.1 society and issued a declaration that the

door in the Flat No.B-303 facing the terrace of 'C' wing is illegal and unauthorized and further that the usage of terrace by the Petitioner though the door of his flat facing towards terrace of 'C' wing is illegal and a direction came to be issued to the Petitioner to remove the disputed door and close the portion of the wall facing towards the terrace of 'C' wing as per the sanctioned plan. The same was directed to be done within three months from the date of the order.

6           The Petitioner aggrieved by the said order dated 22.02.2016 filed an Appeal before the Co-operative Appellate Court which was numbered as Appeal No.34 of 2016. The Co-operative Appellate Court confirmed the order passed by the Co-operative Court on all the issues including the issue of jurisdiction and limitation. The Co-operative Appellate Court held that the dispute being amongst the parties mentioned in Section 91 of the Maharashtra Co-operative Societies Act, 1960 (For short “the MCS Act”) the same was maintainable and therefore the Co-operative Court had the jurisdiction to try and entertain the dispute. In so far as limitation is concerned, the Co-operative Appellate Court held that though the door might have been in use however the non-removal gives a continuous cause of action to the Respondent No.1 society and therefore the dispute filed in the year 2012 was within limitation. The Co-operative Appellate Court accordingly by its judgment

and order dated 07.10.2016 dismissed the Appeal filed by the Petitioner.

7           The Petitioner thereafter filed a Review Application being No.09 of 2016 seeking review of the said order dated 07.10.2016 passed by the Co-operative Appellate Court. The Co-operative Appellate Court dismissed the Review Application on the ground that no case for review under any of the eventualities has been made out by the Petitioner.

8           The Learned Counsel for the Petitioner Mr. Milind Parab initially sought to contend that the Co-operative Court without recording finding on the issues of jurisdiction and limitation has allowed the dispute. It was also the submission of Mr. Milind Parab that the door having been constructed in the year 1998, the dispute filed in the year 2012 was beyond limitation. In my view, it is not possible to accept the said contentions as indicated above, in so far as the issue of jurisdiction is concerned, both the Courts below have concurrently held that the dispute being one amongst the parties mention of whom is found in Section 91 of the MCS Act, the Co-operative Court had jurisdiction to try and entertain the dispute. In so far as the issue of limitation is concerned, both the Courts below were of the view that the cause of action to the Respondent No.1 was continuous on account of the refusal of the Petitioner to close the door opening to the terrace of the 'C' wing of the Respondent No.1

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society. The Petitioner was not in a position to demonstrate that the door was a part of the original sanctioned plan. In my view having regard to the concurrent orders passed by the Courts below, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**