

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1245/2017

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Nilesh Acharya i/b. Khan Altaf for the Petitioner

Mr. Vijay Patil for Respondent No.1.

Ms. Jyoti Chavan, AGP for State.

Mr. Ankur Shah i/b. Virendra Nene for the intervener

Mr. Swargajit Wasnik, Authorised Officer – present

Mr. Sandeep Deshmukh, Former Jt. Registrar – present

Mr. Waman R. Rawool, Desk Officer, Coop. and Marketing, Textile Department – present

CORAM : K. K. TATED, J.

DATE : MAY 5, 2017

P.C.:

1. Heard. By this petition under Article 226 of the Constitution of India, the petitioner challenges order dated 17.04.2017 passed by the respondent No.1 appointing one Mr. Swargajit Wasnik, as an Authorised Officer of respondent No.2 Society Aakash Darshan SRA CHSL. Against the said order, the petitioner preferred an appeal u/s. 152 of the Maharashtra Cooperative Societies Act, 1960 (said

Act) before the State of Maharashtra through the Department of Cooperation, Mantralaya, Mumbai. They also made an application for stay of the order dated 17.04.2017 passed by the respondent No.1 Authority. The petitioner, in para 2 of the petition made a statement that the concerned Hon'ble Minister for State is not available for quasi judicial work till June, 2017. The said statement is made by the petitioner on the basis of the instructions given by the Desk Officer, Coop. and Marketing, Textile Department who was present in the office of the Cooperation Department. Paragraph No.2 and 3 of the petition read thus:

“2. Therefore, immediately on 20th April 2017 the petitioner filed this appeal u/s.152 of the Maharashtra Cooperative Societies Act, 1960 before the State Government (Ministry of Department of Cooperation) at Mantralaya, Mumbai – 400032. However, learned State Minister was not available for said quasi judicial work. Upon enquiry, the advocate for the petitioner was informed that the learned Minister would be available for said quasi judicial work in the month of June 2017. Therefore, by letter dated 25th April 2017, the petitioner approached the Secretary, Cooperation Department and requested to take up the matter for urgent Ad-interim, interim reliefs as the learned Minister for Cooperation was not available for said quasi judicial function. A true and correct copy of entire set of appeal filed u/s.152 of the Maharashtra Cooperative Societies Act, 1960 dated 20th April

2017 is **Exhibit-B**, whereas, a true and correct copy of letter dated 25th April 2017 filed with the Cooperation Department, State Government is **Exhibit-C**. The petitioner also filed stay application seeking ad-interim stay. A true and correct copy of Stay Application is **Exhibit-D**. Petitioner repeats, reiterates and reaffirms the pleadings in the above appeal memo and stay application as if verbatim incorporated herein.

3. Upon enquiry, even learned Secretary, Cooperation Department orally declined to hold any hearing. In this regard, one Mr. Shankar Shelar present in the office of the Cooperation Department orally informed the petitioner that without permission of the State Minister, even secretary also would not be able to conduct hearing in the matter. In the circumstance, the Petitioner consulted his Advocate and accordingly, invoking extraordinary jurisdiction of this Hon'ble Court under the provisions of Article 226 of the Constitution of India, 1950, seeking urgent ad-interim, interim reliefs, in the matter till final adjudication of the above said appeal by the State Government.”

2. The learned counsel for the respondent raised authority of the petitioner to file petition. Hence, the learned counsel for the petitioner placed on record the documents (a) share certificate (b) letter dated 05.05.2011 (c) photocopy of a photograph of authorised officer sealing office premises (d) letter posted by the authorised officer on the society office in support of his contention, that he can file the present petition being a member. He further submits that the

authorised officer prepared and altered the documents to show that the possession of the society was taken on 29.04.2017. He submits that the objection raised by the respondent about the petitioner's authority to file the petition is not maintainable.

3. The learned counsel for the petitioner submits that as the learned Minister for State is not available till June 2017, they filed the Writ Petition for stay of the order dated 17.04.2017 passed by respondent No.1. He further submits that the Authorised Officer Mr. Swargajit Wasnik was present yesterday in the court. In spite of having knowledge that the matter was posted today for hearing, he prepared a list of documents of the society office showing that he took partial possession of the same on 29th April 2017. But in fact he prepared documents on 4th May 2017 in the evening when the present matter was posted today for hearing.

4. In view of the statement made by the learned counsel for the petitioner, this court called upon the learned AGP to place on record a copy of the list prepared by the said authorised officer. The learned AGP produced on record original as well as photocopy of the same. Both the copies are taken

on record and marked “X” and “X1”.

5. Bare reading of the said list shows that the authorised officer made a false statement before this court that he took possession of the society on 29.04.2017 itself. Both the copies show that to misguide the court, he has altered the original list showing that the possession is already taken. In fact the possession was taken by the authorised officer yesterday i.e. 04.05.2017.

6. The photocopies prepared by the authorised officer as well as the letter clearly show that the possession was taken by him yesterday i.e. 04.05.2017. Whereas to show his action he has altered the date of said document showing that the possession was taken on 29.04.2017. As the authorised officer, appointed by respondent No.1, has committed fraud, this court has directed the learned AGP to call the respondent No.1 in-person.

7. Pursuant to the said order, Mr. Sandip Deshmukh, Joint Registrar of Cooperative Societies, East and Western suburbs, as he then was, who passed the impugned order remained present before this court. After going through all these papers, he satisfied that the authorised officer Mr.Swargajit Wasnik altered the documents.

Hence, he has submitted that he would submit a report to the concerned authority to remove the name of the authorised officer Mr.Swargajit Wasnik from the list of panel prepared by the Divisional Joint Registrar, Cooperative Societies, Mumbai. The statement is accepted.

8. At the same time, the learned AGP assured this court to inform the concerned authority to take immediate action against Mr. Swargajit Wasnik.

9. As the application for stay made by the petitioner before the Appellate Authority is kept for hearing on 16.05.2017 at 2.30 pm, I do not find any reason to entertain the Writ Petition, since an alternate remedy available to the petitioner has already been made in motion by the petitioner.

10. The learned AGP Mr. Vijay Patil for respondent No.1 makes a statement that they will replace the authorised officer on or before 11.05.2017 and till that time they will instruct Mr.Swargajit Wasnik not to take any steps in the matter. The statement is accepted.

11. Liberty granted to concerned parties, to move before the Vacation Court, if Mr. Swargajit Wasnik, authorised officer is not replaced.

12. It is made clear that, if a new authorised officer is appointed on or before Thursday, 11.05.2017, he is permitted to take charge of the Society, subject to out come of the appeal filed by the petitioner before the State of Maharashtra.

13. The Authority is directed to hear the petitioner's application for stay in appeal on 16.05.2017, positively.

14. In view of the above mentioned facts and as an alternate remedy has already been made in motion by the petitioner, I do not find any reason to entertain the Writ Petition. Same stands disposed of accordingly.

JUDGE