

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7682 OF 2017
ALONG WITH
CIVIL APPLICATION NO.90 OF 2018

Yashwant Vishwambhar Gawali & Ors. Petitioners/Applicants
V/s.
The State of Maharashtra & Ors. Respondents

Mr. Rajeshkhar V. Govilkar, a/w. Mr. Suhas Inamdar, for the
Petitioners-Applicants.

Mr. A.A. Alaspurkar, A.G.P., for Respondent No.1-State.

Mr. G.N. Salunkhe, i/by Mr. Ashok Misal, for Respondent Nos.3, 5, 8, 12
and 13.

Mr. Prasad P. Kulkarni for Respondent Nos.4, 6, 7, 9, 11, 14 and 15.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND APRIL 2018.

P.C. :

1. Heard Mr. Govilkar, learned counsel for the Petitioners,
Mr. Alaspurkar, learned A.G.P. for Respondent No.1-State, Mr. Salunkhe
and Mr. Kulkarni, learned counsel for the respective Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of
India, the Petitioners are challenging the order dated 21st June 2017
passed by the Maharashtra State Co-operative Appellate Court, Mumbai,
Bench at Pune, in Appeal from Order No.33 of 2017, which was

preferred by the present Petitioners against the order dated 18th May 2017 passed by the learned Judge of the Co-operative Court, Kolhapur, below the application at “Exhibit-5” filed in 'Dispute' bearing C.C. No.116 of 2017.

3. By the said 'Dispute', the Petitioners herein have challenged the “No Confidence Motion” passed against them by the majority members of Respondent No.2-Society. Along with the 'Dispute', they have also filed an application for injunction at “Exhibit-5”, restraining the Society from implementing the said resolution dated 4th May 2017.

4. The Trial Court and the Appellate Court, both, had recorded a concurrent finding of fact that the notice dated 21st April 2017 was not served on Respondent No.3 and he was not present at the meeting. As such, there is prima facie breach of Rule 57A(2)(d) of the Maharashtra Co-operative Societies Rules, 1961. Both the Courts below have further recorded a finding that, there is also breach of Rule 57A(7)(h) of the Maharashtra Co-operative Societies Rules, 1961. However, on equity, it was held that, as the majority of the Managing Committee Members have passed such resolution, allowing Petitioner Nos.1 and 2 to continue as 'Chairman' and 'Vice-Chairman' of Respondent No.2-Society, it would amount to thrusting them on the Society against the wish and will of the majority of the Managing Committee Members. Accordingly, both the Courts below have rejected the prayer of interim relief to the Petitioners.

5. However, by the said order, the Trial Court has expedited the early disposal of the 'Dispute' and, as can be seen, the Appellate Court has, in the 'Appeal from Order', passed the following order on 14th June 2017 in the nature of ad-interim relief :-

“Heard Advocates.

Till next date, ad-interim relief is granted in terms of prayer clauses A and B. The appellants and persons claiming through them are specifically directed to represent the Society for day-to-day work and shall not sign cheques and or to do any sort of financial transactions and take policy decisions on behalf of the Society without permission of this Court.

The parties are directed to argue on next date i.e. 20/6/17.”

6. Subsequent thereto, the Appellate Court has dismissed the said Appeal by its Judgment and Order dated 21st June 2017. Against the said order, the Petitioners have preferred this Writ Petition. In this Writ Petition, this Court has, on 8th August 2017, continued the order of ad-interim relief granted by the Appellate Court and it is running till today.

7. Considering the above factual and legal aspects of the case, in the considered opinion of this Court, it would be just and proper to continue the same interim order till the decision of the 'Dispute' and the hearing of the 'Dispute', which is already expedited by the Trial Court, can be made time-bound.

8. The only submission of learned counsel for the Petitioners is that, though Petitioner Nos.1 and 2 are allowed to carry out day-to-day work, they are not allowed to sign the cheques or to do any sort of financial transactions and take policy decisions on behalf of Respondent No.2-Society. It is submitted that, Petitioner Nos.1 and 2 will not do any sort of financial transactions and will not take any policy decision on behalf of Respondent No.2-Society, without permission of this Court; however, they may be permitted to issue the cheques towards essential requisites, like Electricity Bill, Telephone Bill and Salary Bill of the four staff members.

9. In my considered opinion, to that extent, Petitioner Nos.1 and 2 can be permitted to issue the cheques, but, so far as the remaining part of the ad-interim order is concerned, the same order is continued with a direction to the Trial Court to decide the 'Dispute' pending before it as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order.

10. Writ Petition is disposed of in the above terms.

11. In view of the above, Civil Application No.90 of 2018, pending in the present Writ Petition, does not survive and the same stands disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]