

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9646 OF 2018**

Ravi Developments ..Petitioner
Versus
The Divisional Registrar of
Co-op. Soc., Konkan Division & Ors. ...Respondents

Mr. Makarand Vasant Raut for the Petitioner

Mr. S. H. Kankal, A.G.P for the Respondent No.1-State

Mr. Rohit Kumar Pandey for the Respondent Nos. 2 and 3

Mr. Sharad Waghmare, O.S. Deputy Registrar, Co-op. Societies, Thane Taluka is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 30th AUGUST 2018

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Respondents waive service through their respective counsel.

3 By this petition, the petitioner has impugned the order dated 14th May 2018 passed by the respondent No. 1 i.e. the Divisional Registrar of Cooperative Societies, Konkan Division, Navi Mumbai, on the Intervention Application filed by the petitioner, being Intervention Application No. 38 of 2017 filed in Revision Application No. 68 of 2017.

4 Learned counsel for the petitioner submits that the petitioner is a necessary party to the proceedings. He submits that the petitioner was not a party to the proceedings and that it was Jayesh Shah, a partner of the petitioner, who was a party to the original proceedings before the Deputy Registrar. He submits that though initially one of the partners of the petitioner was made a party to the Revision Application before the Divisional Joint Registrar, on an application preferred by the respondent No.1 for deleting the name of the said person, the Deputy Registrar, vide order dated 3rd November 2017, allowed the said application, without issuing notice to Jayesh Shah/ and without hearing the partner of the petitioner. Learned counsel submits that hence, the issue of res-judicata would not arise, as the petitioner was not a party to the earlier proceeding

nor was the partner of the petitioner ever heard by the respondent No. 1, before his name was deleted. He submitted that the petitioner filed an intervention application seeking his impleadment in the said proceedings, as the petitioner is a necessary party.

5 Learned A.G.P submits that the intervention application was not maintainable and that the petitioner ought to have instead challenged the order dated 3rd November 2017 passed by the Divisional Joint Registrar. Learned counsel for the respondent Nos. 2 and 3 support the learned counsel for the petitioner and state that the petitioner is a necessary party to the proceedings before the Divisional Registrar.

6 Perused the papers as well as the order dated 3rd November 2017 and 14th May 2018 passed by the Divisional Joint Registrar. It is not in dispute that the petitioner has not challenged the order dated 3rd November 2017 and has instead filed an intervention application before the Divisional Joint Registrar seeking impleadment in the proceedings before the Divisional Joint Registrar. It appears that on an application preferred by the respondent No. 3, Jayesh Tokershi Shah, partner of Ravi

Developments was deleted vide order dated 3rd November 2017. Admittedly, Jayesh Shah, partner of Ravi Developments was not heard, nor any notice was issued to him. Thereafter, an intervention application was filed by Ravi Developments i.e. petitioner, seeking their impleadment, being necessary party in the proceedings. A perusal of the order shows that the observation made by the Divisional Joint Registrar, that the application was barred by res-judicata is erroneous, inasmuch as, the intervention application was filed by the petitioner-Ravi Developments and not by Jayesh T. Shah, partner, Ravi Developments. Apart from that, admittedly, as noted earlier, Jayesh Shah was not heard. Hence, the question of application of res-judicata does not arise. This is the only ground on which the application seems to have been rejected.

7 Considering the aforesaid, the impugned order dated 14th May 2018 passed by the respondent No. 1 is quashed and set-aside and the application is restored back to its original file.

8 The respondent No. 1 to consider the intervention application on its own merits having regard to what is stated aforesaid. It is informed

that the next date for hearing is 27th September 2018. The respondent No. 1 shall hear the parties on the said date and pass appropriate orders.

9 Rule is made absolute in the above terms. Petition is disposed of accordingly.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.