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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 370 OF 2018

IN

WRIT PETITION NO. 10360 OF 2017

Shevantilal Chimanlal Shah

...Applicant

IN THE MATTER BETWEEN

Shevantilal Chimanlal Shah

...Petitioner

V/s.

The Chairman/Secretary

Lijjat Godavari Co-operative Society Ltd & Anr

...Respondents

Mr. Drupad S. Patil i/b. Mr. Atharva A. Dandekar a/w. Mr. Kaustubh Thipsay for the Petitioner.

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

Mr. Pawankumar Pande i/b. Clayderman & Co. for Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATE : 16TH FEBRUARY, 2018.

P.C. :-

1. The petitioner has impugned the orders dated 27th November, 1986 passed by the learned District Deputy Registrar and order dated 22nd September, 1987 passed by the learned Divisional Joint Registrar and order dated 01st October, 2001 passed by the learned Minister in this petition.

2. Civil application is filed inter alia praying for an order and

direction against the respondent no.1 society to restore the possession of Flat No.5 in "C" wing of the building to the petitioner subject to payment of Rs. 1,75,043/- along with interest at the rate of 21% p.a. with effect from 01st July, 2002 or such other amount which this Court may deem fit. The petitioner also seeks injunction against respondent no.1 society from parting with possession or creating any third party rights in respect of the said flat in question.

3. Heard learned counsel for the parties. A perusal of the record indicates that the petitioner was expelled by respondent no.1 society for non-payment of the alleged dues of the respondent no.1 society which were in the sum of Rs. 5,000/- on the date of decision of expulsion of the petitioner. Other grounds raised in the notice of expulsion issued to the petitioner were subsequently not pressed and/or not considered as proper by the authorities. The last order passed by the learned Secretary, Hon'ble Ministry, Co-operative Society is dismissing the revision application filed by the applicant on 01st October, 2001. The petitioner however did not challenge the said order before filing this petition.

4. Based on the order passed by the Revisionary Authority confirming the expulsion of the petitioner, respondent no.1 society filed a dispute under Section 91 of Maharashtra Co-operative Society Act for recovery of certain amount. The said dispute was resisted by

the petitioner. There was stay granted by various authorities from dispossessing the petitioner. The writ petition filed by the petitioner arising out of the proceedings filed under Section 91 of Maharashtra Co-operative Society Act came to be dismissed by a learned Single Judge of this Court on 11th July, 2017. A perusal of the said order dated 11th July, 2017 passed by this Court indicates that the said order is based on the premise that the petitioner was already expelled by the respondent no.1 society and the order passed by the Revisional Authority was not challenged. Further this Court made it clear that, if the petitioner wants to pay the arrears and the respondent no.1 society wants to settle the matter with the petitioner, it is between petitioner and the society.

5. The petitioner thereafter filed this petition inter-alia praying for quashing and setting aside the orders passed by the authorities insofar as expulsion proceedings are concerned. Mr. Patil, learned counsel for the petitioner invited my attention to various orders passed by the authorities from time to time and would submit that the petitioner had already paid a sum of Rs. 5,000/- to the respondent no.1 society however, according to the society sum of Rs. 8,000/- was payable and not Rs. 5,000/-. He submits that the matter was pending before the Co-operative Court and thereafter before the Co-operative Appellate Court and then in this Court. The petitioner was

pursuing those proceedings filed by the respondent no. 1 society against the petitioner and thereafter filed by the petitioner against the society arising out of the said dispute under Section 91 of the Maharashtra Co-operative Society Act.

6. The learned counsel on instructions states that his client is ready and willing to pay a sum of Rs. 9,00,000/- to the respondent no.1 society, though according to the society the amount due and payable by the petitioner was in the sum of Rs. 7,53,000/-. A perusal of the orders passed by the authorities and this Court in the proceedings arising out of Section 91 of the Maharashtra Co-operative Society Act clearly indicates that there was some default on the part of the petitioner in making payment of the society. Those findings are upheld and confirmed by this Court in the order dated 11th July, 2017. The petitioner is however without going into the correctness of those orders is ready and willing to pay about Rs. 9,00,000/- to the respondent no.1 society. The petitioner is also ready and willing to pay further amount, if any, due and payable by the petitioner to the respondent no.1 society during the period between 15th June 2017 and till date. Petitioner is ready and willing to pay society dues in future without committing any default.

7. A perusal of the orders passed by the authorities in the expulsion proceedings however clearly indicates that the orders

passed by the authorities are in very casual manner and without considering the hardship being caused to the petitioner by removing the petitioner from the society as a member on account of alleged arrears of a meagre sum. There was a dispute about the quantum of amount payable by the petitioner to the respondent no.1 society. In those circumstances, in my view, the authorities could not have passed a drastic order against the petitioner for expulsion from membership without giving an opportunity to pay differential amount, if any.

8. In view of the fact that the orders passed by the Co-operative Court, Co-operative Appellate Court and this Court having decided against the petitioner on the ground that in view of the expulsion order being confirmed by the Minister, the petitioner is required to vacate the premises is concerned, in my view, since this Court is of the view that the orders passed in the expulsion proceedings are totally erroneous and illegal, those orders passed by this Court in the proceedings arising out of under Section 91 of Maharashtra Co-operative Society Act will not come in the way of petitioner.

9. I am not inclined to accept the submission of learned counsel for the respondent no.1 society that the expulsion was not only on account of the alleged arrears of dues of the society by the petitioner but also on other grounds. A perusal of the orders passed by the

authority arising out of the expulsion proceedings clearly indicates that other charges against the petitioner which were made against him were made against him, he being a part of the managing committee at the relevant time were not pressed and/or decided against the society.

10. Insofar as delay in filing this petition pointed out by the learned counsel for the respondent no.1 society is concerned, though there is some delay in filing this petition, I am inclined to accept the explanation given by the petitioner that since the petitioner was pursuing the dispute filed by the respondent no.1 society against the petitioner before the Co-operative Court and thereafter before the Co-operative Appellate Court and this Court, this petition could not be filed earlier. In any event, the respondent no.1 society can be compensated by a payment of additional amount by the petitioner for such delay in filing this petition. Even otherwise, since this Court is of the view that orders passed by the society as well as the authorities insofar as expulsion proceedings are concerned, are erroneous and contrary to the provisions of the Maharashtra Co-operative Society Act and the bye-laws of the society, I have entertained this writ petition on merits also in these circumstances.

11. I therefore pass the following order:

(i) The petitioner shall deposit a sum of Rs. 9,00,000/- with the

respondent no.1 society within one week from today. The petitioner is also directed to pay sum of Rs. 1,00,000/- to the respondent no.1 society towards cost which shall be paid within two weeks from today.

(ii) The impugned orders passed by the authorities as well as by the societies described in prayer clause (a) are set aside. Respondent no.1 society is directed to hand over the possession of the flat in question to the petitioner within one week from today.

(iii) If any, further amount is due and payable by the petitioner to the respondent no.1 society after 15th June, 2017, the same shall be communicated to the petitioner by the respondent no.1 society within one week from today. Such additional amount, if any, to be paid by the petitioner within two weeks from the date of the receipt of the communication from the respondent no.1 society.

(iv) The petition is disposed of in the aforesaid terms and there shall be no order as to costs. In view of the disposal of the writ petition, civil application is also disposed of. Parties to act on the authenticated copy of this order. The learned counsel for the society seeks stay of this order. Application for stay is rejected.

(R.D. DHANUKA, J.)