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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7213 OF 2019**

Dr. Kishor Vishwanath Gujar
and Anr.

..... Petitioners.

V/s

Tejraj Infra LLP & Anr.

..... Respondents.

Ms. Manjiri Paranis for the Petitioners.

Mr. Shrivallabh S. Panchpor for Respondent No.1.

Mr. Swapnil Chopade for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: 12th July, 2019

P.C.:-

1] Under Section 91 of the Maharashtra Co-operative Societies Act, 1960, Petitioners initiated Dispute No.45 of 2019 with the following prayers:-

“(a) the dispute be allowed with costs throughout.

(b) an injunction be issued directing the defendant not to conclude and finalize the procedure of re-development work without properly addressing the grievances raised by the disputants regarding

parking, the measurement of area in actual possession, orientation of the flat in the new building, etc. raised by the disputants.

(c) the defendant be also directed not to take final decision for approving the development agreement and power of attorney for re-development in the meeting scheduled on 31-03-2019.

(d) it be declared that the resolution passed on 14-10-2018 and 20-01-2019 by defendant in the Special General Meeting are illegal and they are not binding on the disputants.

(e) any other just & equitable orders be kindly passed in favour of the disputants.

(f) if need be, disputants be granted liberty to alter, amend or modify the dispute application.”

2] In the said dispute, a statement is made by the Respondent-Society that they will not finalize re-development agreement in a meeting scheduled on 31st March, 2019. It is informed that the injunction application moved by the Petitioner-disputant before the

Co-operative Court is pending. The present Respondent No.1, in the said dispute, preferred an application Exhibit-16, praying therein that Respondent No.1 be added as Defendant No.2 to the said dispute. The said application is based on the pleadings that Respondent No.1 is a developer of Respondent No.2-Society which has issued a Letter of Intent in its favour for re-development on 20th October, 2018. Respondent No.1 has started work of preparing development plans of the site in question and also handed over Demand Draft of Rs 1 crore to the Society towards security deposit. It is also claimed that Respondent No.1 has paid Rs 1,22,54,809/- to the Pune Municipal Corporation towards development charges.

3] The said application was resisted by the disputants i.e. Petitioners. However, by the order dated 21st June, 2019, the learned Co-operative Court was pleased to reject the said application. The said order was questioned by Respondent No.1 before the Co-operative Appellate Court in Revision and the Cooperative Appellate Court was pleased to allow the said Revision by the order impugned dated 24th June, 2019. As such, this Petition.

4] While questioning the order impugned, the learned Counsel for the Petitioners would invite the attention of this Court to the provisions of Section 94 sub-section (3)(a) of the Act, which reads thus :-

“94(3)(a) If [the Co-operative Court] is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute, [it may order], that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by [the Co-operative Court] shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.”

5] According to the learned Counsel for the Petitioners, Respondent No.1, in any case, cannot be termed as a person interested in the property of a person who is party to the dispute. A support is drawn from the judgment of the Apex Court in the matter of *Margret Almeida and Others vs. Bombay Catholic Co-operative Housing Society Limited and Others*¹, particularly paras 37 onwards.

¹ (2012) 5 SCC 642

6] It is further claimed by the Petitioners-disputants that there is no concluded contract in favour of Respondent No.1, as no agreement of development is executed. Merely issuing of Letter of Intent cannot be termed as a concluded contract as the same, at the most, amounts to giving an offer of entering into agreement with the Society. Relying on the judgment of the Apex Court in the matter of *Speech and Software Technologies (India) Private Limited vs. Neos Interactive Limited*², the learned Counsel submits that Respondent No.1 lacks locus to get impleaded to the dispute in question. That being so, Petition is liable to be allowed.

7] Per contra, the learned Counsel for Respondent No.1, while supporting the order passed by the Co-operative Appellate Court in exercise of its revisional powers, would urge that sub-clause (a) & (c) of Section 94(3) contemplates an involvement of a person other than a member of the society and therefore Respondent No.1 has been rightly added as party-Defendant. He would rely on the provisions of Section 94(3)(a) & (c) of the Act. According to him, even if

² (2009) 2 SCC 475

Respondent No.1 – developer is not a member of Respondent No.2-Society, Respondent No.1-developer can draw support support from the transaction with the Society in establishing its lawful entitlement to be added as Defendant. The fact of issuance of Letter of Intent in favour of Respondent No.1- developer by Respondent No.2-Society and the fact of deposit of security amount of Rs 1 crore with Respondent No.2-Society and development charges of Rs 1,22,54,809/- with the Planning Authority i.e. Pune Municipal Corporation by Respondent No.1- developer, are relied on to justify the order of addition of Respondent No.1 - developer as party-Defendant to the dispute. The learned Counsel for Respondent No.1 would also invite attention of this Court to the nature of relief claimed in the dispute, which, according to Respondent No.1, very much speaks of necessity of adding Respondent No.1 as party-Defendant. As such, he has sought dismissal of the Petition.

8] Considered the rival submissions.

9] Petitioners are members of the Co-operative Society, is not a

fact in dispute and as such, dispute initiated by the Petitioners is very much maintainable against the Society. However, this Court is required to address the issue as regards the order of the Courts below, permitting Respondent No.1 to be added as party-Defendant. The fact remains that the Society is Defendant to the dispute and as such, the relief claimed in the dispute principally appears to be against the Defendant-Society. Perusal of the prayer clauses would demonstrate that conduct of the business of the Society in regard to the appointment of Respondent No.1 for carrying out redevelopment was very much referred to. Appropriate support can be drawn from the pleadings from paras 4 onwards.

10] Apart from above, the fact remains that sub-clause (a) and (c) of Section 94(3) contemplates impleadment of party to the dispute with whom the Society has any transaction in respect of which restrictions have been imposed. The Co-operative Court, Pune, while dealing with the application of Respondent No.1 had considered that claim of Respondent No.1 seeking to add as Defendant No.2, did not fit into the requirement of Section 94 sub-section (3)(a) and (c) of the

Act and as such, was pleased to reject the claim for impleadment vide order dated 21/06/2019 below Exhibit-16. The revision against the aforesaid order has resulted into grant of relief of impleadment by way of impugned order dated 24/06/2019. The Co-operative Appellate Court has noticed that Respondent No.1, who sought impleadment, has deposited an amount of Rs 1 crore with Respondent No.2 – Society in response to the inclination shown by office bearers of the Society and there exists a Letter of Intent in favour of Respondent No.1 - developer. The Co-operative Court then noticed that the relief, if granted in dispute, would indirectly affect the interest of party who sought impleadment and proceeded to grant the relief of impleadment, so as to avoid multiplicity of litigation. On facts, this Court has also taken note of developments at the behest of the Respondent No.1 – developer viz. receipt of Letter of Intent, security deposit of Rs 1 crore with Respondent No.2 – Society and deposit of Rs 1,22,54,809/- with the Corporation towards development charges.

11] In the aforesaid background, in my opinion, considering the scheme under Section 94(3) sub-section (a), it has to be inferred that

Respondent No.1 has acquired certain interest in the property of the Society being a developer. Reliance placed by the learned Counsel for the Petitioners on paras 37 onwards in the matter of *Margret Almeida* cited supra, will be hardly of any assistance, particularly because on facts the case before the Apex Court was not similar to that of the one before this Court. Apart from above, from para 42 of the said judgment, it can be gathered that if a party who sought impleadment has some relationship with the dispute pending with the Court in which it claimed to have acquired interest, such party can, of course, take recourse to the said provision for impleadment.

12] Apart from above, the learned Counsel for the Petitioners has placed reliance upon the judgment in the matter of *Speech and Software Technologies (India) Private Limited* cited supra, so as to canvass that there was no concluded contract. This Court is not required to record any finding on the said issue as it is premature to comment on the said issue in the absence of any oral and documentary evidence and particularly when such issue is not at all looked into by the Courts below.

13] In that view of the matter, no case for interference is made out.
Petition fails and the same stands dismissed.

(NITIN W. SAMBRE, J.)