

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11107 OF 2018

Sandeep Bansilal Shah and Ors. ...Petitioners
vs.
Vinayak Narayan Rajmachikar ...Respondent

Mr. S.N. Chandrachood, for the Petitioners.
Mr.S.G Deshmukh a/w. Mr. S.D. Rayrikar for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : MARCH 25, 2019

P.C.:

1] Heard Mr.S.N. Chandrachood, learned counsel for the petitioners and Mr.S.G. Deshmukh, learned counsel for respondent No.1.

2] The challenge in this petition is to the order dated 11th April 2018, by which the petitioners' application at Exhibit 44 seeking their impleadment as defendants in the suit came to be rejected.

3] Mr. Chandrachood, learned counsel for the petitioners, submits that the suit was instituted by respondent No.1 mainly against defendant No.5 Vrindavan Cooperative Housing Society Ltd (Society). This Society was however, stated to be represented by

Chairman Mr. Narayan Palshikar and Secretary Mr. Manmohan Katkkar. Mr. Chandrachood submits that Mr. Narayan Palshikar was never the Chairman of the Society and therefore, there was a mistake in referring to him as a Chairperson of the Society. He submits that neither Mr. Palshikar nor Mr. Manmohan Katkkar have taken any steps in the suit because, they were not the Office Bearers of the Society. He points out that the Society has not been represented by its authorised Office Bearers. He therefore, submits that the Society is seriously prejudiced in the matter.

4] Mr. Chandrachood submits that the petitioners are proper Office Bearers of the Society and therefore, leave should be granted for their impleadment. Mr. Chandrachood points out that the advocate appearing for defendant No.5 was informed right at the outset that Mr. Palshikar and Mr. Katkkar are not the Office Bearers of the Society and for the fault of advocate, the Society cannot be made to suffer.

5] For the aforesaid reasons, Mr. Chandrachood submits that the impugned order may be set aside and the application at Exhibit-44 may be made absolute.

6] Mr. S.G. Deshmukh, learned counsel for respondent No.1, defends the impugned order on the basis of reasoning reflected therein. He points out that the petitioners have no grievance insofar as defendant Nos.5b, i.e., Manmohan Katkkar is concerned. The grievance with regard to Mr. Palshikar is also not well founded. He points out that both these persons filed necessary Vakalatnama and have represented the Society. He points out that this is nothing but an attempt to indirectly seek leave to file written statement on behalf of the Society, since the Society has failed to file written statement within the prescribed period of limitation. Mr.Deshmukh therefore, submits that there are no *bona fides* involved in the application at Exhibit-44 and the same was rightly rejected by the learned Trial Judge.

7] The rival contentions now fall for determination.

8] At the outset, it is necessary to clarify that the suit which is instituted by respondent No.1 is really not the appropriate proceedings to decide on the disputes between the Office Bearers of the Society. Secondly, though the petitioners state that the advocate of the Society had been informed that the defendant

Nos.5a and 5b are not the Office Bearers of the Society, the advocate failed to point out this position to the Court. There is no material in support of such a contention. Besides, as was noted by the learned Trial Judge, it is not as if defendant Nos.5a and 5b accept that they are not Office Bearers of the Society or that they were not the Office Bearers of the Society on the date when the summons for settlement was served upon them or rather upon the Society through them, the record indicates that defendant Nos.5a and 5b have filed appearance on behalf of the Society. Therefore, simply blaming the advocate, cannot further interests of the petitioners in a matter of this nature.

9] Finally, it does appear that the entire objective of taking out application at Exhibit 44 was to indirectly seek a chance to file a written statement in the suit. This is not a valid or a *bona fide* purpose, for which the provisions of Order 1 Rule 10 of CPC can be invoked.

10] From the perusal of the impugned order, it cannot be said that there is an jurisdictional error or that discretion has been exercised unreasonably or arbitrarily.

11] Accordingly, no case is made out to interfere with the impugned order. This petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

12] At this stage, Mr. Chandrachood, learned counsel for the petitioners, prays that liberty may be granted to defendant Nos.5a and 5b to take out appropriate application for filing written statement on behalf of the Society. Mr. Deshmukh, learned counsel for respondent No.1, opposes this request by pointing out that two such applications were already taken out and rejected. He states that such applications were taken out at Exhibit-42 and 43. Mr.Chandrachood disputes this position. There is no necessity to go into this dispute. However, from the request made, it is very clear that the very taking out of application at Exhibit-44 was with oblique purpose for seeking yet another opportunity to file a written statement. Accordingly, such request cannot be accepted.

(M. S. SONAK, J.)