

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10861 OF 2019

Col.(Retd.) N. Thiagarajan and ors. ... Petitioners

V/s.

Godrej & Boyce Mfg.Co.Ltd. and ors. ... Respondents

Mr.Akash Menon for the Petitioners.

Mr.S.Shah i/by M/s Bachubhai Munim & Co. for
Respondent No.1.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 17, 2019.

P.C.:-

1. Heard Mr.Akash Menon, learned counsel for the petitioners and Mr.S. Shah, learned counsel for respondent No.1.

2. Having regard to the subject matter of controversy raised in the writ petition and the order that is proposed to be passed, court is of the view that issuance of formal notice is not necessary as the case can be disposed of at this stage itself.

3. Petitioners are members of Amaltas Garden Enclave

Co-operative Housing Society Limited, which is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960.

4. Respondent No.1 as the developer had constructed the residential towers, 10 in number, the commercial complex with a club-house and other common facilities in respect of which the co-operative housing society has been formed and registered. Petitioners being members are flat owners in one of the towers constructed by respondent No.1. A resolution dated 2nd January, 2011 was adopted by the Special General Body Meeting of the co-operative housing society, whereby it was decided that all the members should pay club-house charges, failing which the members would not be entitled to use the services of the club-house. This resolution of the co-operative housing society was challenged by the petitioners by raising a dispute before the Co-operative Court at Mumbai, which was registered as Case No.CC/III/66 of 2012. In the said dispute though the co-operative housing society was arrayed as an opponent, respondent

No.1-the developer was not made a party.

5. Nonetheless, after hearing the matter, Co-operative Court passed order dated 13th July, 2017 declaring the resolution dated 2nd January, 2011 as null and void. The co-operative housing society was directed not to charge the petitioners for the club-house expenses.

6. Assailing such order of the Co-operative Court, respondent No.1 preferred an appeal before the Maharashtra State Co-operative Appellate Court at Mumbai (Appellate Court) which was registered as Appeal No.108 of 2018. The appeal was contested by the petitioners.

7. After hearing the matter, Appellate Court allowed the appeal and set aside the order dated 13th July, 2017. While remanding the dispute back to the Trial Court for fresh adjudication, it was directed that the Appellant-Respondent No.1 should be added as a party to the dispute with further direction that respondent No.1

should file written statement within 30 days from the date of its impleadment as a party.

8. Challenging the aforesaid order, petitioners are before this court.

9. Relevant portion of the order dated 29th July, 2019 is extracted hereunder:-

“1) Appeal No.108/2018 is allowed on the following terms:

2) Judgment and Award dtd.13/07/2017 passed in dispute No.CC/III66/2017 by Ld. Judge, Co-operative Court No. III Mumbai is set aside.

3) Dispute bearing No.CC/III66/2017 is remanded back to the Trial Court for fresh trial with a direction to the Trial Court to join the appellant as party in the dispute.

4) Appellant shall file written statement within a period of 30 days from the date its joining as party.

5) Ld.Trial Court shall decided the dispute as per due procedure of law on merit by giving fair opportunity to the respective parties.

6) Parties shall remain present before the Trial Court on 29/08/2019 at 11.00 a.m. without failed.

7) Parties to bear their own costs.”

10. Though technically, the resolution impugned in the Trial Court was that of the co-operative housing society, nonetheless the dispute centers around the expenses of the club-house to be borne by the members of the co-operative housing society. It was therefore necessary that respondent No.1, which had constructed the club-house as part of the common amenities for the flat owners ought to have been heard by the Co-operative Court before taking a decision on the dispute raised by the petitioners. Therefore, without expressing any opinion on merit, court is of the view that the impugned order does not cause prejudice to the petitioners in any manner whatsoever. No error or infirmity is discernible. No case of interference is made out. However, the Co-operative Court should expedite the hearing of the matter and should dispose of the dispute preferably within a period of three months from the date of appearance of the parties.

11. Consequently, Writ Petition is dismissed.

(UJJAL BHUYAN, J.)