

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2468 OF 2019

Oilfield Engineers Cooperative
Housing Society Ltd. .. Petitioner
vs.
Dr. Sachendra Mathur and anr. .. Respondents

Mr. Harish R. Pawar for the Petitioner.
Mr. Sachin R. Pawar for Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.
DATE : 18 MARCH 2019.

ORAL JUDGMENT :-

1] Heard Mr. Harish R. Pawar for the petitioner and
Mr.Sachin R. Pawar for the respondents.

2] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the orders dated 1st
March 2018 made by the Cooperative Court and 7th July
2018 made by the Cooperative Appellate Court, Mumbai in
favour of respondent Nos.1 and 2. The effect of the impugned
orders is that the petitioner stands injuncted from interfering
with parking rights of respondent Nos.1 and 2 during
pendency of the dispute before the Cooperative Court. In a

sense, therefore, the impugned orders to operate during pendency of disputes before the Cooperative Court and not final orders.

4] Mr. Harish Pawar, learned counsel for the petitioner, submits that approving plans clearly indicate that the so called parking place, is nothing but office space for the petitioner society. He submits that the Chief Promoter had no authority to allot this space as parking place to the disputants. He points out that the Resolution now been passed to make this position quite clear. For all these grounds, Mr. Patil submits that the impugned orders warrant interference.

5] Mr. Sachin Patil, learned counsel for the respondents (original disputants) defend the impugned orders on the basis of reasoning reflected therein. He relies on ***Wander Ltd. and Another V. Antox India P. Ltd. - 1990(Supp) Supreme Court Cases 727*** to submit that in matters relating to interim orders, this Court, should be slow to interfere unless a case of unreasonability or arbitrariness is

pointed out. He points out that in the present case both courts have concurrently hold in favour of the disputants and there is absolutely no unreasonableness or arbitrariness involved in the view taken therein. He submits that the petition may be dismissed.

6] Mr. Sachin Pawar further points out that the appeal itself was not maintainable before the Appeal Court since the same was filed beyond the prescribed period of limitation and the appeal memo was not accompanied by any application seeking condonation of delay. He submits that in a time barred appeal, the Appeal Court had no jurisdiction to grant the petitioner any relief. He submits that this an additional reason as to why the appeal was dismissed by the Appeal Court and to this, the petitioner has no answer.

7] The rival contentions now fall for determination.

8] In this case, the two Courts have concurrently exercised discretion and granted certain interim reliefs to the disputants. The contentions now raised by the learned

counsel for the petitioner were specifically raised before both the Courts and both the Courts have dealt with the contention. From the perusal of the impugned orders, it cannot be said that there is any unreasonableness or arbitrariness involved in the reasoning reflected in the impugned orders. Taking into consideration the restricted parameters of interference as set out by the Supreme Court in *Wander Ltd. and Another V. Antox India P. Ltd. (supra)* no case is made out for warranting interference with the impugned orders.

9] Besides, the Appeal Court has quite correctly held that the appeal was required to be filed within sixty days, but was filed on the ninety first day. Admittedly, there was no application seeking any condonation of delay. Accordingly, Mr. Sachin Pawar is right in his submission that the Appeal Court would not have been in a position to grant any relief on merits to the petitioner.

10] For both the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed.

11] Notwithstanding dismissal of this petition, it is made clear that any of the observations in the impugned orders made by the Cooperative Court and the Appeal Court have to be regarded as only *prima facie* observations necessary for the purpose of deciding the issue of interim reliefs. This means that the Cooperative Court should not be influenced by any of the observations in the impugned orders as well as any observations in the present order, whilst deciding the dispute finally on its own merits and in accordance with law.

12] With clarification as aforesaid, this petition is dismissed. Rule is accordingly, discharged. All contentions of all parties on merits of the dispute are specifically kept open. There shall be no order as to costs.

13] Learned Cooperative Court is requested to dispose of the dispute expeditiously.

14] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)