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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4460 OF 2018

Akshay Ashok Awathare & Ors.	..Petitioners.
V/s.	
Rajaveer Palace Co-op.Hsg. Society Ltd.	..Respondents.

Mr.P.G.Hartalkar I/b. Tejas P.Hartalkar for the petitioners.

Mr.Amit M.Anandan with Anish K.Yalappil I/b. Triyama Legal for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mr.Hartalkar, learned counsel for the petitioners and Mr.Anandan, learned counsel for respondent No.1.

2. Challenge in this petition is to the order dated July 26, 2017 made by Maharashtra State Co-operative Appellate Court, Mumbai, Bench Pune. The operative part of which reads as under :-

- “1. The A.O. No.22/2016 is hereby disposed off.
2. The order dated 27/01/2017 passed below Exh.5 by the Ld. Judge Co-operative Court No.1 Pune, in the dispute bearing No.84/2016 is replaced herein after.

A) The application at Exh.5 filed in case No.84/2016 before Co-op. Court No.1 Pune is partly allowed.

B) During pendency of the dispute, the opponent society is hereby restrained from causing hindrance to park vehicles by the disputants in their respective parking spaces.

C) The Society is at liberty adopt legal recourse to recover rent / charges from the disputants towards allotted parking spaces.

D) The cost will be the cost in the cause.

3. The parties to bear their own costs of appeal. ”

3. Mr.Hartalkar, learned counsel for the petitioners submits that the society is not entitled to levy charges at the rate of Rs.1,400/- per month. He submits that the society is practicing discrimination inasmuch as charges are levied only upon the petitioner. He submits that there are several other members of the society who are not made to pay these charges. Therefore, he submits that the impugned order warrants interference.

4. Mr.Anandan, learned counsel for respondent No.1 submits that the charge of discrimination is not correct. He submits that there are some members in the society who have purchased parking slots from the builder and obviously in respect of such members, there are no parking charges payable. He submits that this does not amount to discrimination.

5. According to me, no case is made out to interfere with the impugned order. The Appeal Court has held that the society is at liberty to take legal recourse to recourse to recover rent / charges for parking space. At the highest, it can be clarified that whatever payment the petitioners make towards rent / charges for parking shall be without prejudice to the rights and contentions in the dispute. This means that if ultimately the dispute is decided in favour of the petitioners, they will be entitled to refund / adjustment from the society.

6. Upon making aforesaid position clear, this petition is disposed of. There shall be no order as to costs.

7. The Co-operative Court is directed to dispute of the dispute as expeditiously as possible without in any manner being influenced by any observations made in the impugned order or for that matter in the present matter. The dispute will have to be disposed of on its own merits and in accordance with law.

8. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)