

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

WRIT PETITION NO.13523 OF 2018

1. Ashish Mishra
2. Gajraj Rao
3. Mrs. Kavita Pandiwar
4. Mr. Rajmohan Nair
5. Mrs. Sunita Khot
6. Mr. K.K. Tiberwal
7. Mr. Asgarali Singapurwala
8. Mr. Yagnesh A. Jani

Nos.1 to 8 are Managing Committee Members of the Serenity Shri Sai Wing B1 and B2 CHS Ltd.

9. Serenity Shri Sai Wing B1 and B2 CHS Ltd., Oshiwara, New Link Road, Jogeshwari (W), Mumbai 400 102.

...Petitioners

Versus

1. The Divisional Joint Registrar, Co-op. Societies and Ors. Mumbai Division, Mumbai, 6th Floor Malhotra House opp. G.P.O. Fort, Mumbai-400 001.

2. The Deputy Registrar, C.S., MHADA Room No.211, 1st floor Bandra (E), Mumbai-400 051.

3. Tulsidas Krishna Sannake
(Administrator)

4. Santosh Kanekar

5. Diwakar Khatri

6. Rajiv Gharat

7. Shourya K. Chakravarty

8. The State of Maharashtra,
Department of Co-operation,
Mantralaya, Mumbai.

...Respondents

**WITH
WRIT PETITION NO.13909 OF 2018**

1. Ashish Mishra

...Petitioners

2. Gajraj Rao

3. Mrs. Kavita Pandiwar

4. Rajmohan Nair

5. Mrs. Sunita Khot

6. K.K. Tiberwal

7. Asgarali Singapurwala

8. Yagnesh A. Jani

Nos.1 to 8 are Managing Committee
Members of the Serenity Shri Sai
Wing B1 and B2 CHS Ltd.

9. The Chairman /Secretary, Serenity
Shri Sai Wing B1 and B2 CHS Ltd.,
Oshiwara, New Link Road,
Jogeshwari (W), Mumbai 400 102.

Versus

1. The Divisional Joint Registrar, Co-
op. Societies and Ors. Mumbai
Division, Mumbai, 6th Floor Malhotra
House opp. G.P.O. Fort, Mumbai-
400 001.

2. The Deputy Registrar, C.S.,
MHADA Room No.211, 1st floor
Bandra (E), Mumbai-400 051.

3. Tulsidas Krishna Sannake

(Administrator)

4. Santosh Kanekar

5. Diwakar Khatri

6. Rajiv Gharat

7. Shourya K. Chakravarty

8. The State of Maharashtra,
Department of Co-operation,
Mantralaya, Mumbai.

...Respondents

.....

Mr. Kishor Patil I/b. Ms Anju J. Mane for the Petitioners in
WP/13523/2018 and I/b. Mr. Pravin Fernandes for the Petitioners in
WP/13909/2018.

Ms P.J. Gavhane, AGP for the Respondent -State.

Mr. S.R. Nargolkar I/b. Mr. Swapnil S. Mohite for the Respondent
No.3.

Mr. P.S. Dani, Senior Advocate with Mr. Ketan Joshi for the
Respondent Nos.4, 5 and 7 in WP/13523/2018 and for the Respondent
Nos.4 to 9 in WP/13909/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th FEBRUARY, 2019.

JUDGMENT:-

In the Writ Petition No.13523 of 2018, filed during the
pendency of revision application No.782 of 2018 the Petitioners have
sought following reliefs :

"(a) Issue an appropriate Writ/Order quashing and setting
aside the Order dated 20.10.2018 passed by the
Respondent No.1 and Order dt.27.07.2018 passed by
Respondent No.2 thereby appointing administrator over

Petitioner No.9 Society by superseding the committee members of the Petitioner No.9 Society.

- (b). Issue an appropriate Writ/Order directing the Respondent No.8 to decide the Revision Application (under Section 154 of the Said Act) and Stay Application filed therein by the Petitioners as expeditiously as possible and within such time as this Hon'ble Court may deem fit and proper.”

2. Writ Petition No.13909 of 2018 has been filed after the disposal of the revision Application No. 782 of 2018 for the following reliefs:-

- “a. Issue an appropriate Writ /Order quashing and setting aside the Order dated 13/11/2018 (at Exh-“H”) passed by the Ld. Minister, Department of Co-operation, Marketing and Textile, in Revision Application No.RVA/2018/P.K.782/15C.
- b. Issue an appropriate Writ/Order quashing and setting aside the Order dated 20/10/2018 (at Exh-“E”) passed by the Respondent No.1 in Appeal No.195/2018, thereby confirming the Order dt.27/07/2018 passed by Respondent No.2 appointing administrator over Petitioner No.9 Society by superseding the Committee Members of the Petitioner No.9 Society.
- c. Issue an appropriate Writ /Order quashing and setting aside the Order dated 27/07/2018 (at Exh-“C”) passed by the Respondent No.2 thereby appointing administrator over Petitioner No.9 Society by superseding the Committee Members of the Petitioner No.9 Society.”

3. Mr. Kishor Patil, the learned counsel for the Petitioners

submits that in view of dismissal of revision application the first petition has rendered infructuous.

4. Mr. P.S. Dani, the learned senior counsel for Respondent Nos.4, 5 and 7 in Writ Petition No.13523 of 2018 and for the Respondent Nos. 4 and 9 in Writ Petition No.13909 of 2018 and Mr. S.R. Nargolkar the learned counsel for the Respondent No.3 in both the petitions have opposed withdrawal of the Petition. They have submitted that the Petitioners had circulated the petition before the vacation court and obtained interim relief on a false pretext that the stay application was pending before the Respondent No.8 and that failure to pass an order amounts to refusal of interim relief. The learned counsel for the Respondents have submitted that the Petitioners had obtained the interim relief on 14th November, 2018 by suppressing the fact that the revision application was already dismissed by the Respondent No.8 by order dated 13th November, 2018. They have further submitted that the Petitioners had also suppressed the fact that the Administrator had already taken charge on 28th October, 2018. They contend that the Petitioners have abused the process of law and are therefore not entitled for any equitable relief.

5. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties.

6. The Petitioners are the members of the Petitioner No.9 society. Pursuant to the complaint made by the Respondent No.4- Santosh Kanekar, the Respondent No.2 had issued a show cause notice to the Petitioners under Section 78 (A) (1) of the Cooperative Societies Act. Upon hearing the Petitioners and the Complainant, the Respondent No.2, by order dated 27.7.2008 appointed Respondent No.3 as the Administrator of the Petitioner No.9 society. The Petitioners challenged the order in an appeal filed before the Respondent No.1, which came to be dismissed by order dated 25th September, 2018. The Petitioners challenged the said order in revision application No.782 of 2018 and applied for stay of the order.

7. The Petitioners invoked the writ jurisdiction of this court by filing Writ Petition No.13523 of 2018, with a grievance that the Respondent No.8 had not passed any order on the stay application and that failure to pass an order amounts to rejection of the interim relief. Paragraph Nos. 7, 8 and 9 of the petition read as under:-

“7.The Petitioners submit that the Chairman, the Secretary and the Treasurer who are managing the affairs of the Petitioner No.9 Society have not handed over charge to the administrator in consonance to the Order passed by Respondent No.2. The said office bearers are still under control of the affairs of Petitioner No.9 Society. The Petitioners submit that the Respondent No.3 however had created some record to indicate that he had taken the charge. The Petitioner herein submits that the charge is neither handed-over by the Petitioners nor taken over by the Administrator as per the procedure in law. The Petitioner submits that this Hon'ble Court has lead down ratio with regard to the issue related to handing over of charge by committee members to Administrator in reported case of Babasaheb Apparao Akat and Ors. Versus State of Maharashtra and Ors. Reported in 2010 (2) Bom.C.R.578. The Petitioners crave leave and rely refer upon the said Judgment as and when it is produce.

8. The Petitioner submits that during the pendency of Appeal No.195 of 2018 before Respondent No.1 there was an interim protection till the final disposal of the Appeal. The Petitioners have placed the said Order before the Respondent No.8 with a request to continue the interim relief till the disposal of the Revision Application. However the said Stay Application is not being considered.

9. The Petitioner submits that non passing any Order on the Stay Application amounts to refusal of relief. Hence, the Petitioner has approached this Hon'ble Court for appropriate reliefs as prayed herein under.”

8. The Petition was circulated before the vacation Court on 14.11.2018 on which date following order was passed:-

“ Heard learned counsel for the Petitioners.

2.List the Petition on 24/11/2018.

3. Learned Counsel for the Petitioners submits that though he has filed the Revision before the Hon'ble Ministry alongwith application for stay, no order has been passed thereon. He has invited my attention to the order passed by the Appellate Authority-Divisional Joint Registrar, Co-op. Societies, Mumbai. While confirming the order dated 27th July, 2018 passed by the Deputy Registrar, Co-operative Societies, the Divisional Joint Registrar has vacated the stay order dated 16/08/2018 granted earlier.

4. Considering the submissions made by the learned Counsel for the Petitioners, interim order dated 16/08/2018 which was granted by the Appellate Authority to continue till 24/11/2018.

5. Parties to act upon authenticated copy of this order.”

9. The averments made in the petition clearly indicate that the interim relief was sought on the pretext that the respondent no.8 had not passed any order on the stay application. The affidavits filed by the Respondent Nos.4 to 7 as well as one Ashok Patil, the Officer of the Respondent No.3 /(Administrator), as well as the roznama in revision application no. 782/2018 clearly indicate that the petitioner as well as Respondent Nos.4 to 7 were present before the Respondent No.8 on 30/10/2018. The revision application was heard on 30/10/2018 and the same was closed for orders. The records further indicate that the

respondent No.8 had dismissed the revision application by judgment dated 13th November, 2018. Despite this order, the Petition was circulated on 14/11/2018 before the vacation court for interim relief on the ground that the stay application was not being heard. The interim order was obtained by suppressing the fact that the arguments were heard in the revision application and that the revision application was already dismissed on 13/11/2018.

10. The Respondent Nos.4, 5, 6 and 7 have stated that the Respondent No.3- Administrator had taken charge of the society and appointed Ashok Patil as a Manager of the Society. Ashok Patil has also placed on record a Memorandum prepared at the time of taking over possession of the society. The said Memorandum clearly reveals that the Respondent No.3-Administrator had taken charge of the society in presence of the Petitioner No.8 and that he had signed the said memorandum.

11. The Respondents have also placed on record an additional affidavit filed by the Petitioner No.1 before the Respondent No.8, wherein the Petitioner No.1 had stated that the Respondent No.3- Administrator had taken charge of the Society with the help of the

police on 28/10/2018. The Petitioner No.1 had alleged that the Administrator had taken forcible charge as per the instructions of the Respondent Nos.4 to 7, despite knowing that the revision application was fixed for hearing on 30/10/2018.

12. It is thus evident that the Petitioners were well aware that the Administrator had already taken charge of the society on 28/10/2018. The Petitioners suppressed this material fact and sought stay of the impugned order dated 27/07/2018 after the execution and implementation of the order and further after dismissal of the revision challenging the said order.

13. The affidavit filed by Ashok Patil indicates that on 17/11/2018, the Petitioner Nos.1, 5 and 8 went to the office of the Society and informed him that this Court had passed an order dated 14/11/2018 to hand over charge/possession of the Society to the Petitioners. He had brought this fact to the notice of the Respondent No.3. The Respondent No.3 was out of station and told him that he would look into the matter after his return on 19/11/2018, after taking necessary legal advice. He has stated that when he refused to hand over possession, the Petitioners called the police and took him to the

police station. He has stated that the Petitioner with the help of the police pressurized and compelled him to handover the keys of the office to the Petitioners.

14. The Respondents have placed on record copy of the letter dated 17/11/2018 addressed by the Petitioner No.1 to Ashok Patil, representative of the Administrator, stating that "*as discussed and instructed by High Court and agreed by you, we are taking possession of our office*". This letter fortifies the contention of the Respondent Nos.4 to 7 as well as Ashok Patil that the petitioners had obtained possession by representing that this Court had permitted them to take charge/possession of the Society. Needless to state that this Court had not passed any order directing the Administrator to handover the charge or possession of the office or permitting the Petitioners to take or possession of the office. It is evident that the Petitioners have obtained possession of the society office by not only misinterpreting the order of this Court but by falsely representing that this Court had in fact permitted them to take possession of the office.

15. The records thus indicate that the Petitioners had approached the Court with unclean hands. In this regard the learned

counsel for the Respondent No.3 has relied upon the decision of the Apex Court in ***Amar Singh Versus Union of India and Others (2011)***

7 SCC 69, has observed as under:-

“50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.

Xxx

53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.”

xxx

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fide'.”

16. In ***Oswal Fats Oils Ltd. v/s. Additional Commissioner (Administration) , Bareilly Division, Bareilly and others (2010) 4***

MLJ 567, the Apex Court has observed as follows :-

“15. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from

concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. ...”

17. It is thus well settled that a person coming to the Court with unclean hands, who misleads the Court and abuses the process of the Court cannot be shown any indulgence. He is neither entitled to be heard on merits of the case nor entitled for any relief, interim or final. In the instant case, the Petitioners have obtained the ad-interim relief by suppressing the material facts and by misleading the Court and thereafter misused the order of the Court to obtain possession of the office. The Petitioners are therefore not entitled to be heard on merits of the matter. Furthermore, it is the bounden duty of the Court to ensure that there is no unauthorised or wrongful gain to anyone as a result of abuse of process of the Court. The Petitioners, having taken charge/possession of the society by misusing the order of this Court, cannot be allowed to continue to be in possession of the office of the Society. Hence, the following order :-

- (i) Writ Petition Nos.13523/2018 and 13909/2018 stand dismissed.

- (ii) The Petitioners are directed to handover the charge of the Society/premises to the Respondent No.3. Senior Police Inspector, Oshiwara Police Station is directed to give police protection to the Respondent No.3-Administrator, if necessary.

(SMT. ANUJA PRABHUDESSAI, J.)