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

WRIT PETITION NO.5014 OF 2019

Karvir Nagar Co-operative Housing Society
Ujalwiwadi, Taluka Karvir, District Kolhapur
Through Chairman – Niwas Narayan Mane ... Petitioner

Versus

The Tantra Sangam Co-operative Housing
Society, Ujalaiwadi, Taluka Karvir,
District Kolhapur. Through Chairman – Sharachandra
Annasaheb Wale and Ors. ...Respondents

Mr. C. G. Patil, for the Petitioner.

Mr. Abhishek Kulkarni, for the Respondent Nos.5 and 6.

CORAM : REVATI MOHITE DERE, J.

DATE : 27th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Kulkarni, waives service on behalf of Respondent Nos.5 and 6.
3. By this Petition, the Petitioner has impugned the orders dated 3rd July, 2018, passed below Exhibit – 325 as well as the order dated 2nd

January, 2019, passed below Exhibit – 346, by the learned Civil Judge, Senior Division, Kolhapur, in Regular Civil Suit No.918 of 1997.

4. Perused the papers as well as the impugned orders dated 3rd July, 2018 and 2nd January, 2019. The petitioner is the original plaintiff, who has filed Regular Civil Suit No.918 of 1997, as against the Respondents for Declaration and Injunction. Pursuant thereto, the Respondents appeared in the said Suit and filed separate written statements. It appears that all along the Respondent No.1 projected itself to be a Registered Society under the Maharashtra Co-operative Societies Act. It appears that the other Respondents in their written statements had also taken the same stand. It appears that subsequently the Respondent Nos.1, 5 and 6 filed an application in the trial Court, to show that the Respondent No.1 – Society was not in existence. The said two letters filed by the Respondent Nos.1, 5 and 6 are at page nos.82 and 83 of the petition. The said letters have been addressed by the Deputy Registrar of Co-operative Societies and the Assistant Registrar of Co-operative Societies respectively. According to the petitioner, the Respondent No.1 as well as the Respondent Nos.5 and 6 had taken a false stand with respect to the status of the Respondent No.1 – Society earlier and had mislead by stating that the Respondent No.1 – Society was a registered Society. Pursuant thereto, the

Petitioner filed an application (Exhibit – 325), under Order I Rule 10 of the Code of Civil Procedure, seeking addition of 10 persons in the said Suit. It *prima facie* appears that in view of the stand taken by the Respondent Nos.1, 5 and 6, at the fag-end of the trial, the petitioner was constrained to file the said application. The trial Court issued summons to the proposed Defendants. It appears that the summons could not be served as the addresses of the said persons in the application were incorrect. It appears that pursuant thereto, the petitioner filed another application and sought a direction as against the Respondents to furnish correct addresses of the proposed Defendants. Accordingly, the trial Court passed an order and directed the Respondents to furnish correct addresses of the proposed defendants. However, inspite of the said order, the respondents did not furnish the addresses of the proposed Defendants.

5. According to the learned counsel for the Respondent Nos.5 and 6, they did not have the correct the addresses of the proposed defendants and hence could not furnish the addresses. It appears that on 3rd July, 2018, as the suit was transferred from one Court to another Court, when the application (Exhibit – 325) was called out for hearing, the Petitioner and their advocate were not present. Pursuant thereto, the learned trial Judge filed the said application and disposed it of. The typed copy of the said

order is on page 88A of the petition. Thereafter, the petitioner filed another application (Exhibit – 344), under Order V Rule 20 of the Code of Civil Procedure, for issuing public notice in ‘Daily Sakal, newspaper, *qua* the proposed defendants. The learned Judge rejected the said application (Exhibit – 344), in view of the earlier order passed below Exhibit – 325. A typed copy of the said order dated 7th September, 2018 is on page 91A of the petition. Again the petitioner filed an application (Exhibit-346) in the trial Court under Section 151 of the Code of Civil Procedure and prayed that the orders passed below Exhibits – 325 and 344 be recalled and public notice be issued under Order V Rule 20 of Code of Civil Procedure. The said application was resisted by the Respondents. The learned Trial Court after hearing the parties dismissed the said application vide order dated 2nd January, 2019, passed below Exhibit – 346. A typed copy of the said order is on page 96A of the petition.

6. Learned Counsel for the Respondent Nos.5 and 6 submits that no ground was made out for interfering in the impugned orders, inasmuch as, the matter is posted for final arguments.

7. It *prima facie* appears that initially the stand of Respondent Nos.1, 5 and 6 was that the Respondent No.1 was a registered Society and

only subsequently i.e. in the year 2016, the Respondent Nos.1, 5 and 6 filed an application for the first time and stated that the Respondent No.1 does not exist and that there was no Society in existence and filed two letters/ documents, in support of their contention. Pursuant thereto, the petitioner was constrained to file an application for adding the proposed defendants, under Order I Rule 10 of Code of Civil Procedure. The said application (Exhibit – 325) admittedly has not been considered on merits but was simply filed by the learned Judge as the Petitioner and their advocate were not present. It is therefore evident that Exhibit – 325 has not been decided or considered on merits by the trial Court. As noted above, the second order dated 7th September, 2018, passed below Exhibit – 344 was rejected in view of the earlier order. Even the application filed by the petitioner for recalling the said two orders was rejected by the trial Court vide order dated 2nd January, 2019. The learned Judge appears to have rejected the said application (below Exhibit – 346), essentially on the ground that no averment were made in the said application and that the same was filed belatedly. In the facts, the learned Judge ought to have allowed the application and recalled the orders passed below Exhibits – 325 and 344 respectively as they were not considered on merits and thereafter proceeded to hear both the applications, on its own merits, in accordance with law.

8. Considering the aforesaid, the impugned order dated 2nd January, 2019, passed below Exhibit – 346, in Regular Civil Suit No.918 of 1997, by the learned Civil Judge, Senior Division, Kolhapur, is quashed and set aside. Since the orders passed below Exhibits - 325 and 344 are not on merits, the same are also quashed and set aside and both applications are restored back to its original file. The learned Judge to decide both the applications i.e. Exhibits - 325 and 344, on its own merits, in accordance with law, uninfluenced by the order dated 2nd January, 2019. The learned Judge to pass orders below the said applications, after hearing both the parties. All contentions of all parties are kept open. Since the Suit is of the year 1997, the hearing of the suit is also expedited.

9. Needless to state, it is always open for the Respondents to file their say in both the applications.

10. The Petition is allowed. Rule is made absolute in the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.