

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6709 OF 2019

M/s Kajali Sahakari Samudayik Krushi Petitioners
Sanstha Limited through
Salim Anwar Barvatiya & Ors.

Vs.

Upendra Ramji Rai & Ors. Respondents

Mr. Sandesh Patil a/w Anusha Amin i/by Divya Pawar for Petitioners.
Mr. Prasad Dani, Senior Advocate i/by Mr. Ajay Rachmale for
Respondent No.1.
Mr. Sachin R. Pawar for the Respondent No.12.

Coram : NITIN W. SAMBRE, J.

Date : 26th AUGUST, 2021

P.C.:

1. Pursuant to the Consent Terms dated 26th April, 2019, the compromise decree under Order XXIII, Rule 3 of Code of Civil Procedure came to be passed on 30th April, 2019 by the Court of Joint Civil Judge, Senior Division, Palghar.

2. The Petitioners strangers to the said decree, claiming to be the genuine office bearers of the Defendant-Society moved under Proviso to Rule 3 of Order XXIII of C.P.C. for setting aside compromise decree alleging that they are lawful members of the executive committee. The shares of the members who have entered in compromise are transferred in their favour and the decree is obtained by practicing fraud/ misrepresentation.

3. In the said proceedings, the Petitioners moved an application for stay to the execution of compromise decree, which came to be rejected vide impugned order dated 1st June, 2019 passed by the Civil Court Senior Division, Palghar. As such, this petition.

4. Shri. Patil, learned counsel appearing for the Petitioners would strenuously urge that once the Court is of the opinion as to whether the very proceedings for setting aside compromise decree dated 30th April, 2019 preferred under the Proviso to Order XXIII, Rule 3 C.P.C. are maintainable or not, it was expected to decide the said issue

first than to reject the application of the Petitioners. He would invite attention of this Court to the observations in the order impugned based on the documents on record to claim that the Petitioners are the real office bearers of the original Defendant-Society as the existing members/ office bearers have transferred their interest in the form of shares to their favour. As such, the submissions are, till the issue of maintainability is decided, ad-interim protection ordered by this Court, which is in operation for last two years, needs to be continued with a direction to the trial Court to decide the issue of maintainability expeditiously. He would further claim that if certain observations are made on merits, in view of aforesaid submissions as to the maintainability of the proceedings and objections thereto by decree-holder, the order impugned is not sustainable.

5. While opposing the claim, Mr. Dani, learned Senior Counsel appearing for the decree-holder would urge that the decree was passed in tune with the provisions of Rule 3 of Order XXIII of C.P.C. According to him, plain reading of proviso contemplates that the objections if any

like one in the nature, which is preferred by the Petitioner is not maintainable as could be inferred from the plain reading of said proviso. He would submit that on merits also, there is enough material to infer that the Petitioners have no locus in the matter and that being so, the order impugned is very much sustainable.

6. Considered rival submissions.

7. I have gone through the relevant papers produced alongwith the Petition so as to substantiate the claim by the Petitioners and also by the Respondent in support of the order impugned.

8. Before passing such compromise decree, the Petitioner has not questioning / objected the Consent Terms, which are arrived at and tendered on 26th April, 2019.

9. The compromise decree appears to have been entered into based on Consent Terms by the office bearers, who were duly elected and are certified to be lawful In-charge of the affairs of Defendant-

Society by the Co-operative Officer, Class-I, Co-operative Societies Talasari. The said officer has certified that the members of the Managing Committee were elected for a period from 20th January, 2016 to 2019-2020, which communication still holds good.

10. In view of certificate issued by the competent authority, it is difficult to disbelieve the case of Respondent/Defendant particularly when the Petitioners were unable to establish and substantiate their case. Though, it is claimed that the then office bearers who signed the consent terms with cogent evidence have resigned from their respective posts, the Petitioners have failed to establish thereby demonstrating that as a consequences they were put into charge of the administration and affairs of the Defendant-society. The order passed by the Court below appears to be in tune with the evidence produced on record by the Respondent so as to substantiate their claim that they are legally elected office bearers and have every right to safeguard the interest of Society and its members.

11. The fact that there was a dispute between the office bearers as to the lawful administration of the Society could have been taken by the Petitioners to its logical end by taking out appropriate proceedings, which admittedly the Petitioners have failed to.

12. In the wake of above, in my opinion, no case for interference in extra ordinary jurisdiction is made out. The Petition lacks merits. As such stands dismissed.

(NITIN W. SAMBRE, J.)