

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

WRIT PETITION NO. 5259 OF 2022

Marina Dsouza and Ors.	...Petitioners
vs.	
The State of Maharashtra	
Thr. Principal Secretary Dept. of Co.-op.	
And Textiles and Ors.	...Respondents

Mr. Pravin S. Tembhekar - Advocate for the Petitioners
Smt. M. P. Thakur - AGP for the Respondent-State

CORAM :	S.V. GANGAPURWALA AND S. M. MODAK, JJ.
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DATE :	05th JULY, 2022
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P. C. :-

1. Learned counsel for the Petitioners submits that Petitioner would not press the prayer with regard to expunging the observations in the Order of the learned Single Judge dated 03/05/2019 in Writ Petition No. 7928 of 2015.
2. Learned counsel for the Petitioners submits that the suit filed by the present Respondent No. 5 bearing Suit No. 2957 of 2019 is false, frivolous and vexatious. The Respondent No. 5 does not have *locus standi* to file the said suit. More over the suit is barred by limitation.
3. According to the learned counsel, if the suit is without cause of action, barred by limitation and filed by the person not possessing the

locus standi, then this Court in exercise of Jurisdiction under Article 226 of the Constitution of India can entertain the Writ Petition and dismiss the Suit. According to the learned counsel, the plot is allotted to the Petitioners individually and not to the society. The society as such cannot possess the cause of action to maintain the Suit.

4. Learned counsel to buttress his submission that this Court can entertain the Writ Petition and dismiss the Suit in Writ Jurisdiction under Article 226 of the Constitution of India relies upon the following judgments:

- 1) *T. Arivandandam Vs. T. V. Satyapal and Another* delivered by Supreme Court of India on 14/10/1977.
- 2) *M. Meiyappan Vs. C. Mariappan* delivered by Madras High Court on 21/08/2018
- 3) *M/s. Southern and Rajamani Vs. R. Srinivasan* delivered by Madras High Court on 30/03/2010
- 4) *Suil Tawari Vs. Janak Ram Kurre* delivered by Madras High Court on 16/07/2021.
- 5) *N. V. Srinivasa Murthy and Ors. Vs. Mariyamma (Dead) by proposed Lrs* delivered by Supreme Court on India on 11/07/2005
- 6) *Surya Dev Rai Vs. Ram Chander Rai and Ors.* delivered by Supreme Court of India on 07/08/2003.
- 7) *K. K. Modi Vs. K. N. Modi and Ors.* delivered by Supreme Court of India on 04/02/1998.

5. There cannot be any dispute about the proposition that the jurisdiction of this Court under Article 226 of the Constitution of India is extra ordinary, however at the same time the same is circumscribed by the well

laid down procedure.

6. It appears that earlier some proceedings had taken place before the Registrar of the Co-operative society. The order of Registrar was challenged and Writ Petition was filed before this Court bearing Writ Petition No 7928 of 2015 by the present Respondent No. 5 in which the present Petitioner was also party. Court had made certain observations and had also given liberty.

7. We are not entertaining into merits of the contention at this stage as it would be preempting decision by the authority/Trial Court and may prejudice the case of either of the parties. In view of that we refrain from considering merits of the matter.

8. In case according to the Petitioners, the suit is vexatious or without cause of action then the Petitioners have remedy under Order VII Rule 11 of the Code of Civil Procedure. The Petitioners are at liberty to avail the said remedy.

9. In case the Petitioners file such an application before the Trial Court, the Trial Court shall consider the said application on its own merits and endeavour to decide the same expeditiously, considering that the present Petitioner No. 1 is a Senior citizen.

10. All contentions of the respective parties are kept open. Writ Petition is disposed of. No costs.

[S. M. MODAK, J.]

[S.V. GANGAPURWALA,J.]