

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7187 OF 2022

Vipul Dharod

.. Petitioner

Versus

Prabhakar Parte & Anr.

.. Respondents

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- Mr. Shree Ganesh M. Khaire a/w Ms. Kainat Sayyed for Petitioner
- Mr. Nilesh S. Parte for Respondent No. 1
- Mr. Ramgopal S. Tripathi for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 06, 2022

ORDER:

1. By the present petition, Petitioner has, *inter alia*, prayed for the following reliefs:-

“(a) That, this Hon’ble Court be pleased to call for the record and proceedings in Chamber Summons No. 1266 of 2019 in Execution Application No. 345 of 2009 in Dispute No. CC/III/676 of 1986 disposed of by HHJ Shri. M. Salman Azmi, the learned Judge presiding in C.R. No. 1, City Civil Court, Mumbai and after going into its legality and propriety same be ordered to be quashed and / or set aside;

(b) That, on quashing and / or setting aside the impugned order dated 23.11.2019 this Hon’ble Court be pleased to allow the Petitioner’s Chamber Summons No. 1266 of 2019 in Execution Application No. 345 of 2009.”

2. The Petitioner has challenged the order dated 23.11.2019 passed by the Executing Court in Chamber Summons No. 1266 of 2019 in Execution Application No. 345 of 2009 filed in Original Dispute No. CC/III/676 of 1986.

3. Heard Mr. Khaire, learned Advocate for Petitioner; Mr. Parte, learned Advocate for Respondent No. 1 and Mr. Tripathi, learned Advocate for Respondent No. 2.

4. Chamber Summons 1266 of 2019 is filed by Applicant – Vipul Dharod (Petitioner herein). Petitioner has contended that he is the original member of Respondent No. 2 - Society since 09.07.1980 and his name is reflected in the original record and share register of the society. According to Petitioner, Respondent No. 1 (Prabhakar Parte) is the decree-holder but he is not a member of the society and his name is also not reflected in the original list of members.

5. The *lis* between the decree-holder (Respondent No. 1) and Judgment-debtor (Respondent No. 2 - Society) pertains to the year 1986. Respondent No. 1 filed a suit before the Co-operative Court wherein a restraint order was passed injunctioning Respondent No. 2 - Society from disposing the F.S.I. potential available on the land of the society, and *inter alia*, directing the society to prepare a seniority list of its members and to allot flats to its members according to the said list.

6. In 2005, Society initiated expulsion proceedings under Section 35 of the Maharashtra Co-operative Societies Act, 1960 read with Rules 28 and 29 of the Maharashtra Co-operative Societies Rules 1961 against the Petitioner and 6 other original members of

the Society. Petitioner filed Writ Petition No. 2855 of 2008 in this Court. Separate Writ Petitions were filed by the other expelled members. By common order dated 31.03.2017, the Writ Petitions were allowed and the Asst. Registrar, Co-operative Societies was directed to hear the Petitioners and decide their grievance against expulsion. Accordingly the Asst. Registrar, Co-operative Societies, after hearing parties, rejected the expulsion order of the said members, including the Petitioner.

7. Mr. Khaire, learned Advocate for Petitioner has painstakingly submitted that by virtue of the impleadement Application i.e. Chamber Summons filed by Petitioner in the Executing Court, the Petitioner desires to aid and assist the Executing Court in complying with the decree passed by the Co-operative Court and also render assistance to Respondent No. 2 - Society in preparation of the list of members of the Society. He submitted that there are certain discrepancies in the preparation of the list of members and since he has adequate knowledge and expertise, he would render fruitful assistance to the Society and the Executing Court in implementing the judgment & decree of the Co-operative Court.

8. Perusal of record indicates that Petitioner is the son of the developer who had constructed the buildings on the Society's land. Before the Executing Court, the decree-holder had specifically

contended that Petitioner had created numerous problems for all members of the society. That the decree-holder has an award dated 16.08.2001 in his favour and is entitled to get a flat pursuant to the said award. That the decree-holder is a member of the Society contrary to the claim of Petitioner. That Petitioner has also lost before various Courts in various disputes raised by him. Mr. Parte and Mr. Tripathi have vehemently opposed the Petitioner's plea. They have jointly submitted that the Executing Court is seized of the matter and they do not require any assistance from the Petitioner in the Executing Court which shall execute the decree strictly. That the Petitioner, due to his animosity against the decree-holder and the Society holds a grudge against them due to the previous history of redevelopment.

9. Perusal of the record further reveals that any grievance of the Petitioner regarding his seniority cannot be the subject matter of the Execution of decree by the Executing Court. Execution of the decree is a matter strictly between the decree-holder and the judgment-debtor on the one hand and the executing Court on the other hand. The learned Court has correctly observed in the impugned order that the Petitioner is at liberty to agitate his grievance, if any, pertaining to his seniority and the forum lies elsewhere. The Executing Court cannot go into the validity of the Seniority list prepared by the Society. The scope and extent of the executing

proceedings are strictly confined to the decree passed by the learned Co-operative Court. Such scope cannot be increased and extended by allowing the Petitioner to be impleaded in the execution proceedings especially in the facts and circumstances of the present case. Both Respondent No. 1 (decree-holder) and the Society have seriously objected the intervention of the Petitioner for the aforementioned reasons. There are serious disputed questions of facts also which have been agitated by the Respondents qua the Petitioner. It is seen that the impugned order dated 23.11.2019 is a well reasoned order and therefore does not call for any interference. Chamber Summons of the Petitioner seeking intervention has been rightly dismissed. The impugned order is sustained.

10. In view of the above, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
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AMBERKAR
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