

Nikita

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

WRIT PETITION NO.6531 OF 2022

Rizwana Mohd Sami Shaikh Thr. Her
Constituted Attorney Shabnam Moh.
Sami Shaikh ... Petitioner

V/s.

Maharashtra Housing and Area
Development Authority and Ors. ... Respondents

WITH

WRIT PETITION NO.6534 OF 2022

Shabnam Mohd Sami Shaikh ... Petitioner

V/s.

Maharashtra Housing and Area
Development Authority and Ors. ... Respondents

Mr. Hussain Dholkawala a/w Mr. Eshaan Borikar i/b
Mr. Firoz Shaikh, for the Petitioner.

Mr. Baugwala Yusuf Suleman for Respondent No.19
and 20.

Mr. Santosh Parad i/b Ms. Aruna Savla a/w Mr. Vikas
Kumavat for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

P.C.:

1. The order impugned in these writ petitions allow application of member of a cooperative society to join them as defendant in a suit filed by the petitioner seeking following reliefs:

“A) That this Hon’ble Court be pleased to pass a declaratory Decree setting aside the Compromise Decree

dated 23rd September, 2011 passed in Long Cause Suit No.904 of 2009 after holding that the Consent Terms dated 24th June, 2011 constituting the compromise on the basis of which the said Compromise Decree dated 23rd September, 2011 came to be passed was void, illegal and not lawful;

B) That this Hon'ble Court be pleased to pass a permanent Order and Injunction restraining the Respondents from in any manner acting in pursuance of the Compromise Decree dated 23rd September, 2011 passed in Long Cause Suit No.904 of 2009;

C) That during the pendency of the present Suit this Hon'ble Court be pleased to pass a temporary Order and Injunction restraining the Respondents from in any manner acting in pursuance of the Consent Decree dated 23rd September, 2011 passed in Long Cause Suit No.904 of 2009;

D) That during the pendency of the present Suit this Hon'ble Court be pleased to pass a temporary Order and Injunction restraining the Respondents from proceeding with the Execution Application No.253 of 2012 in L.C. Suit No.904 of 2009 filed before this Hon'ble Court;"

2. On perusal of the reliefs, it appears that the plaintiff is seeking setting aside of compromise decree executed between the developer and the cooperative society. According to the petitioner, in a general body meeting dated 10 April 2021, flat was allotted in his favour; however, without his consent the cooperative society entered into compromise with the developer.

3. In such a suit, the Court is required to adjudicate as to whether the plaintiff has enforceable right to claim relief, or not. In such a suit, the relief claimed by the plaintiff needs to be defended by the cooperative society and the developer.

4. It is well settled that once a person become member of a society, he looses his identity to pursue the cause which can be pursued by the cooperative society (see **Daman Singh v. State of Punjab** reported in (1985) 2 SCC 670) and **Dinesh Kantilal Panchal Vs. State of Maharashtra** reported in 2008 (6) Mh. L. J. 819.

5. Learned advocate for the respondent relies on judgment of Apex Court in the case of **Razia Begum v. Sahebzadi Anwar Begum** reported in AIR 1958 SC 886. He relies on paragraph No.13(2) of the said judgment. There cannot be dispute about the legal preposition laid down by the Apex Court, however, in the facts of the case, the relief sought by the plaintiff assails the compromise decree in L.C. Suit No.904 of 2009, based on consent terms executed between the Co-operative Housing Society and the Developer. The respondent is member of the Co-operative Housing Society. Therefore, whatever grievance respondent has against the Co-operative Housing Society needs to be agitated and prayed before the appropriate forum created under the relevant act. In a suit for enforcement of civil rights filed by the petitioner is not a forum where a dispute between the petitioner and a proposed respondent can be adjudicate. The scope of the suit is limited only to the extent to ascertain whether the plaintiff is entitled to relief as prayed for in the suit.

6. Learned advocate for the respondents submitted that the society is not contesting the suit. In that case, the remedy of respondent is to take appropriate steps for enforcement of rights confirmed by the provisions of the Maharashtra Cooperative

Societies Act, 1960 and the Indian Contract Act, 1872 before the appropriate forum by adopting the appropriate remedy as is available in law.

7. However, the respondents being member of Co-operative Housing Society and beneficiaries of consent terms, cannot be termed as necessary party. Therefore, the Trial Court erred in allowing the application.

8. In that view of the matter, the applicant who claims to be beneficiary of compromise deed and claims right based on order passed by this Court on 11 October 2017 in Writ Petition No.1564 of 2014 along with connected matters shall have remedies as are available in law. However, the petitioner being *dominus litis*, it is his choice to whom he wants to make defendant as a party.

9. Making such defendant and opposing the impleadment of the present respondent shall be at the risk of the petitioner.

10. In that view of the matter, in my opinion, defendant No.20 who applied under Order 1 Rule 10 of the Code of Civil Procedure, 1908 was not a necessary party. Hence, the impugned order needs to be quashed and set aside.

11. The impugned order is quashed and set aside.

12. Both the writ petitions stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)