

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5399 OF 2016

The Bharatiya Friends Co-op. Hsg.Soc.Ltd.	...Petitioner
Vs.	
Mahesh K. Mehta	...Respondent

Mr. Kushal Amin with Mr. Smeet Savla i/b. S.K. Srivastav & Co. for
Petitioner.
Mr. Mahesh Mehta, respondent in person.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 16, 2023

P.C.:

1. This writ petition has been filed by the petitioner cooperative housing society against the respondent who is its member. The dispute between the parties is the subject matter of a dispute (Case No. CC/I/52/2014) as filed by the respondent against the petitioner praying for an injunction before the Co-operative Court. An application for a temporary injunction as filed by the respondent came to be allowed by an order dated 28 October, 2015 passed by the Co-operative Court at Mumbai. Such order passed by the Co-operative Court was assailed by the petitioner-society before the Co-operative Appellate Court. The petitioner's appeal came to be dismissed and accordingly, the present proceedings came to be filed. Thus, the petition arises from interim orders passed by the Co-operative Court pending adjudication of the suit/dispute.

2. Perusal of the record would show that this petition was admitted by an order dated 04 July, 2016 by a Co-ordinate Bench of this Court and while admitting the petition, interim order in terms of prayer clause (b) came to be granted whereby the order granting temporary injunction in favour of the respondent by the Co-operative Court dated 28 October, 2015 came to be stayed. The respondent was aggrieved by an order dated 04 July, 2016 passed by this Court and approached the Supreme Court in the proceedings of Petition(s) for Special Leave to Appeal (C) No(s). 8023/2017 which came to be dismissed by the Supreme Court vide an order dated 24 March, 2017 with the observations that the High Court is requested to hear the matter as expeditiously as possible.

3. On such backdrop, the present proceedings are listed before the Court as the respondent had moved this Court praying that the proceedings be taken up and accordingly, the proceedings are listed today. The dispute in the proceedings is in regard to the premises of the respondent as situated in the building of the petitioner-society wherein the respondent is undertaking a commercial activity of keeping paying guests in his flat, which he has stated that he is permitted in law to do so. The petitioner-society appears to have opposed to this activity being against by-laws of the society as also the terms and conditions of the Lease Deed entered by the society with the State Government. This is

the nature of the dispute in the proceedings before the Co-operative Court.

4. In my opinion, certainly adjudication of the issues in this petition would amount to mini trial of the issues which need to be adjudicated in the dispute pending before the Co-operative Court. The proceedings are pending before this Court from the year 2016. There is an interim order dated 04 July, 2016 which is in operation and which has not been disturbed even by the Supreme Court.

5. In these circumstances, in my opinion, it is appropriate that the dispute itself, which is almost 9 years old, needs to be adjudicated expeditiously. It is in the interest of the parties that they urge all their contentions in the pending suit which has now progressed upto the stage of evidence, as informed by learned counsel for the petitioner.

6. The petition is accordingly disposed by permitting the parties to raise all contentions in the pending suit/dispute.

7. The Co-operative Court is also directed to expeditiously dispose of the dispute and in any event on or before 31 March, 2024.

8. The interim order passed on the present petition, which has been continued to operate till date, shall continue to operate till disposal of

the suit/dispute. If the parties have any other contentions to raise, they are free to raise such contentions by filing appropriate application before the Co-operative Court. All contentions in that regard are expressly kept open.

9. Needless to observed that if the respondent has benefit of certain orders passed in any other proceedings, he shall be entitled to the benefit of those orders and all contentions of the petitioner in that regard are also expressly kept open.

10. Disposed of in the above terms. No costs.

11. It needs to be observed that the respondent who appears in person is not interested in expeditious disposal of the petition despite being repeatedly pointed out that the present petition is pending before this Court for almost 6 years and it will be in his interest that the dispute is adjudicated and accordingly the above order is passed.

12. At this stage, the respondent in person states that this order be kept in abeyance. In my opinion, such a request cannot be accepted.

[G.S. KULKARNI, J.]