

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2570 OF 2022
IN
WRIT PETITION NO. 3589 OF 2000

Sandeep Madhav Dhume ... Applicant

In the matter between

Shree Poornanand Saraswati Co-op. Housing
Society Ltd.

... Petitioner

Versus

Sandeep Madhav Dhume & Ors.

... Respondents

Mr. Girish Godbole, Senior Counsel a/w. Mr. Rohit Gupta, Jimish Shah
and Mr. Anand Iyer i/b. Divya Shah Associates for the
applicant/respondent no. 1.

Ms. Vaishali S. Nimbalkar, AGP for the State/respondent nos. 2 and 3.

Mr. Chitanya Bhandarkar for the petitioner.

CORAM: G. S. KULKARNI, J.
DATED: 24 February 2023

P.C.

1. Heard Mr. Godbole, learned senior counsel for the applicant/original
respondent no. 1 on this Interim Application. The applicant in the present
application has made the following prayers:

“a) that this Hon’ble Court be pleased to permit the applicant to
withdraw the statement submitted by the learned counsel appearing on
behalf of the applicant as recorded in the Order dated 20 November, 2019
passed in Interim Application No. 1 of 2019 in Writ Petition No. 3589 of
2000 being Exhibit-E to this Interim Application.

In the alternative to prayer (a) above

(a-1) The applicant may be permitted to suitably modify the statements
made on behalf of the applicant as recorded in the order dated 20
November, 2019 in Writ Petition no. 3589 of 2000 so as to permit the

applicant to carry out absolutely essential repairs in the said flat so as to avoid its further damage due to natural forces including but not restricted to stopping leakages etc.

b) This Hon'ble Court be pleased to expedite the hearing of the said Writ Petition.

c) for interim and ad-interim reliefs in terms of prayer (a) or (a-1) hereinabove."

2. The dispute in the present proceedings is in regard to the membership of the petitioner-Cooperative Society (for short '~~the~~ society') being granted to the applicant (original respondent no. 1 in the writ petition). Admittedly, the applicant has succeeded before the Deputy Registrar of the Cooperative Society, who issued a direction to the petitioner/Society by an order dated 21 April, 1998 to grant membership of the Society and/or to issue a share certificate in favour of the applicant. Such order passed by the Deputy Registrar was assailed by the Society before the Divisional Joint Registrar Cooperative Societies, Mumbai Division (Appeals), Mumbai who passed an order dated 15 October, 1999 as impugned in the petition thereby confirming the order passed by the Deputy Registrar, Cooperative Societies. The impugned order passed by the Divisional Joint Registrar is a well reasoned order under which the Society is under an obligation to accept the applicant as a member and issue the share certificate.

3. Mr. Godbole has drawn the Court's attention to an order dated 3 October, 2000 passed by a co-ordinate Bench of this Court to submit that the petition was admitted and there was an interim stay granted to the orders of the authorities below. The said order reads thus:

"Heard the learned counsel for both the sides.

Rule.

Interim stay in terms of prayer clause (c)."

4. Mr. Godbole submits that the effect of the interim order is only qua the issue of membership. He has further stated that throughout during the pendency of this petition, the applicant has been paying the maintenance charges to the Society and the same has been accepted, however, mainly because the present proceedings are pending, no receipts are being issued. Mr. Godbole has also drawn the Court's attention to the observations of the learned Divisional Joint Registrar in paragraph 3 of the order wherein as a matter of fact, the Divisional Joint Registrar has observed that on 15 July, 1995 the applicant had submitted the application for membership along with required fees and documents to the Society and also that the Managing Committee in its meeting held on 1 August, 1975 had admitted applicant as member and allotted Flat No. 154 to him. It is also recorded that subsequently, respondent no. 1 paid full cost, which was an amount of

Rs.70,861/- to the Society and thereafter the Society vide letter dated 10 July, 1978 informed the applicant to pay the maintenance charges, which the applicant had paid promptly. Subsequently, it was expected by the applicant that the Society would issue a share certificate, however, it was not issued despite requests which ultimately led to the dispute being taken to the Deputy Registrar, who passed an order directing the Society to issue share certificate and that the formalities in that regard be completed. There is a prior history to this litigation. There were proceedings between the parties before the co-operative Court which may not be relevant in the present context.

5. Mr. Godbole has drawn the Court's attention to another order dated 11 January, 2008 passed by the co-ordinate Bench of this Court on the present proceedings wherein this Court in paragraph 1 of the said order has specifically recorded a statement as made on behalf of the Society that the applicant has been occupying the flat in question however, there were arrears of maintenance charges. Further, a statement on behalf of the Society was also recorded that within a period of one week from the date of the said order, the Society will serve the advocate for the applicant with the details of the outgoings and maintenance charges, which are due and payable by the applicant. It was also recorded that the Society would allow the applicant to inspect the relevant books, if necessary and after inspection of the books, the applicant would arrange and make payment of charges, if outstanding, without prejudice to the

rights and contentions. The said order is required to be noted, which reads thus:

“1. Mr. Jamdar appearing for the petitioner society states that the First respondent has been occupying the premises in the building of the petitioner society but there are arrears of maintenance charges.

2. Mr. Jamdar, states that within a period of one week from today, the society will serve the respondent no.1 Advocate, the details of the outgoing and maintenance charges which are due and payable by the respondent no.1. The Society would also furnish xerox copies wherever available of the bills. The society would also allow the respondent no.1 to inspect the relevant books, if necessary. Ms. Paranjpe appearing for the First Respondent states that after these details are received, the first respondent would arrange and make payment of charges, if outstanding, without prejudice to the rights and contentions.

3. Needless to state that the statement of Mr. Jamdar, to forward details of the claim towards outgoing is without prejudice to the rights and contentions of both sides.

4. Ms. Paranjpe, states that the First respondent does not admit that any amount towards maintenance charges and outgoing is due and payable. The quantum now mentioned is the disputed figure.

S.O. 2 weeks.

6. Perusal of the record indicates that it is on such conspectus, the proceedings had remained pending and were taken up before the co-ordinate Bench of this Court along with companion matters on 20 November, 2019. On 20 November, 2019, this Court had passed the following order:

“1. Heard Mr.Chaitanya Bhandarkar, learned counsel for the applicant-original petitioner and Mr.Godbole, learned senior Counsel instructed by M/s.Divya Shah Associates for respondent No.1. Also heard Mr.N.C.Walimbe, learned AGP for respondent Nos.2 and 3.

2. While hearing the application Mr.Godbole, learned senior counsel for respondent No.1 submits that only an internal wall within flat No.154 of the concerned building has been demolished and presently the work for change of floor tiles is proposed. However, when it was brought to the notice of Mr.Godbole that there is a stay order operating in the writ petition against orders allowing membership of respondent No.1 in the petitioner-Co-operative Housing Society, he makes a statement at the Bar that if related writ petition is heard expeditiously, his client will not go ahead with change of the floor tiles.

3. Statement made by Mr. Godbole is taken note of.
4. Interim application is disposed of.”

(emphasis supplied)

7. It thus appears to be not in dispute that the applicant was in possession of Flat no. 154 and had commenced renovation. There is some dispute that renovation was being resorted to by the applicant without taking appropriate approval of the Society as per the bye-laws. The renovation however had commenced. There were certain issues in regard to leakage/seepage of water raised due to such renovation. In this context, on 8 September, 2021, this Court had passed the following order appointing a Structural Engineer:-

“ After having heard Mr. Bhandarkar and Mr. Godbole, learned counsel for the applicants on these Interim Applications and Mr. Sakhardande, learned senior counsel for respondent no. 4, it appears that the immediate issue which needs to be addressed pending the final disposal of these petitions is regarding leakage/seepage of water from the disputed premises, to the flat occupied by respondent no. 4.

2. Mr. Godbole and Mr. Bhandarkar, learned counsel for the Society fairly state that an inspection can be undertaken by an expert so as to find out the cause of such leakage. The parties are permitted to have an inspection by a mutually appointed expert/Structural Engineer. The parties are free to attend and participate when the expert undertakes such inspection. After the inspection is complete, let a report of the inspection be prepared by the expert, copies of which be furnished to both the parties, as also be placed on record of this application, so that further orders can be passed, to fix the responsibility on the concerned party to undertake repairs. This for the reason that there appears to be some contest on the issue, as to who will undertake the repairs.

2. Accordingly, stand over to **15 September, 2021**.
3. All contentions of the parties are expressly kept open.
4. Permission to file affidavits.”

8. The report of Shetgiri & Associates was accordingly also placed on record.

9. Thus, in my opinion, considering the fact-situation the applicant cannot be permitted to be bound by the statement as made and recorded in the order dated 20 November, 2019 and which was a statement on an expectation that the Court would hear the Writ Petition expeditiously, which has not happened. Thus, in my opinion, in the facts and circumstances of the case, the applicant would be entitled to relief relieving the applicant from the statement as made on behalf of the applicant and recorded by the co-ordinate Bench of this Court in its order dated 20 November, 2019.

10. Today the anxiety of the applicant is that he intends to complete the renovation and occupy the premises. Mr. Godbole makes a statement that during the structural repairs, internal walls were removed, which were not of any damage to the building. Mr. Godbole, however, on instructions submits that the walls would be restored to the original position. In short, his submission is that flat would be restored to its original position and all the renovation shall be completed by 30 May, 2023 positively, and that there shall not be any extension whatsoever to complete the renovation. Statement as made by Mr. Godbole is accepted as undertaking to the Court and any breach of the statement in regard to non-completion of the renovation invite all consequences of the breach of the orders passed by the Court.

11. It needs to be observed that the Society is seriously contesting all the proceedings against the applicant who has succeeded before the forums below and it is expected on behalf of the applicant that there is likelihood that the Society may cause hurdles / impediments in the smooth undertaking of the renovation work, i.e. by carrying material from the ground floor to 15th floor, where the applicant is residing. For the benefit of the above orders to be taken by the applicant, certainly the Society needs to be directed not to create hurdles or any dispute in regard to the applicant carrying materials in a usual manner as a normal renovation of high-rise flat would take place as also the applicant shall undertake the renovation work strictly as per the rules and regulations of the Society.

12. In the event, it is found that the Society is creating unwarranted hurdles and/or the applicant is taking unwarranted liberty, the Court would be constrained to pass appropriate orders and which shall be at the cost and consequence of the concerned parties. However, it is expected that a wiser sense would prevail at least in regard to the renovation so that work is completed on or before 30 May, 2023 as directed in the aforesaid paragraphs of the present order. After the renovation work is completed, it be certified by the Structural Engineer as appointed by this Court, by the earlier order whose

certification be submitted to the society and placed on record of the present petition.

13. As stated by Mr. Godbole, the applicant would continue to pay maintenance amount to the Society at the rates other members of the Society are paying, which shall also be paid without rights and prejudice of the parties.

14. Needless to observe that after the renovation work is complete, the applicant would be permitted to occupy the premises.

15. At this stage, learned counsel for the Society fairly states that the Society shall make an appropriate calculation of arrears of interest and furnish the details of the same to the applicant and the applicant shall take an appropriate position after such calculation is received.

16. Parties to act on the authenticated copy of this order.

17. Interim Application is accordingly disposed of in the above terms keeping open all contentions of the parties on the merits of the plea in the pending proceeding.

(G. S. KULKARNI, J)