

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4939 OF 2018
with
INTERIM APPLICATION NO. 18828 OF 2022
IN
WRIT PETITION NO. 4939 OF 2018

Sanjay Sukhdev Jadhav & Anr. ... Petitioners
Versus
Suresh Rangrao Bobade deceased through ... Respondents
Legal heirs and Anr.

Mr. Ramdas A. Shelke, for the Petitioners.
None for the Respondents.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 07, 2023

PC.

1. Heard learned Counsel for the petitioners.
2. This petition under Article 226 and 227 of the Constitution of India assails judgment and order dated 12 January 2018 passed by the President, Maharashtra State Co-operative Appellate Court, Bombay, whereby Appeal No.31 of 2017 filed by the petitioners against the judgment and award dated 10 February 2017 passed by the learned Judge, Co-operative Court, Thane, in Case no CCT 92 of 2013 has been partly allowed in terms of the following order:-

"ORDER"

1. Appeal is allowed partly.
2. Award passed by the Ld. Judge, Co-operative Court, Thane is set aside and in that place award in terms of following

relief is passed.

3. Opponent No.1 society is directed to allot flat No.207(A) to the flat of disputants and flat no.207(B) to the flat of opponent Nos.2 and 3, maintain its record accordingly and go on issuing maintenance bills by mentioning flat no.207(A) and 207(B) as stated above.

4. In peculiar facts and circumstances parties to bear their own costs.

5. Award be drawn accordingly.”

(emphasis added)

3. The dispute between the parties subject matter of the present proceedings, is quite peculiar. Respondent No.1 - Suresh Rangrao Bobade had filed Dispute No.CCT 92 /2013 before the Court of learned Judge, Co-operative Court at Thane, praying for a relief of a declaration that the act of respondent No.2-Om Satyam Co-operative Housing Society, Thane, (for short “the Society”) indicating Flat No.B-206 instead of Flat No.B-207 in monthly maintenance bills issued to him, be declared to be illegal; and for a further prayer that the Society be directed to rectify its record and issue monthly maintenance bills in his name by indicating Flat B-207 on the bills. The dispute as filed by respondent No.1 came to be allowed by the learned trial Judge by judgment and award dated 10 February 2017 which is in the following terms.

“ORDER

1. Dispute is decreed with costs.
2. It is hereby declared that, the act of the society showing flat No.B-206 instead of flat No.B-207 in monthly maintenance bill of the disputant is illegal and bad in law.
3. Opponent society is directed to rectify the record of the society and issue the monthly maintenance bill in the name of disputant by mentioning flat No.B-207.
4. Award be drawn up accordingly.”

4. It is thus seen that by the judgment and award passed by the

learned Judge, Co-operative Court, the respondent No.1 was granted a declaration that the act of the society showing Flat B-206 instead of B-207 in respect of monthly maintenance bill issued to respondent No.1 was illegal and that the society shall rectify the record and issue monthly maintenance bills in the name of respondent No.1 by mentioning flat No.B-207. The petitioner being aggrieved by the judgment and award passed by the learned Judge, Co-operative Court, approached the Co-operative Appellate Court in the appeal in question being Appeal No.31 of 2017, which has been allowed as noted above.

5. The only grievance and contention of the petitioner is that the Co-operative Appellate Court ought not to have issued directions as contained in paragraph 3 of the operative part of the order which has the effect of altering the description of the petitioner's flat from Flat No.B-207 to Flat No.207(B), in the maintenance bills to be issued to the petitioner. It is his submission that this would cause prejudice to the petitioner when the petitioner's flat is being sold in future, as there would be inconsistency in the description of the flat in the agreement and the bills being issued by the Society.

6. It appears that the flat as belonging to respondent No.1 and the flat belonging to the petitioner are different and distinct premises. It also appears that the flat in question was sold by the developer by a registered agreement dated 8 December 1985 in favour of respondent No.1 in which the flat belonging to respondent No.1 was described as "Flat No.B-207". In the flat which was sold by the developer by an agreement executed on the same day and registered, being agreement

dated 8 December 1985 as sold in favour of one Vinayak Govindrao Palande, from whom the petitioner had purchased the said flat on 5 April 2010, also contained the description of such flat as Flat No.B-207. The petitioner did not have any quarrel on the maintenance bills which were being issued by the society to the petitioner as per the agreement entered by the developer originally with respondent No.1 and in case of the petitioner's flat with Mr.Palande, and thereafter the petitioner. The petitioner has continued to remain undisturbed although there was an error in the flat numbers. The fact however remains that the two flats are different and distinct.

7. The society, however, appears to have committed an error in issuing monthly maintenance bills to respondent No.1 whereby although the respondent No.1's agreement described his flat as 'B-207', the bills were issued as 'B-206', which was certainly not the flat of respondent No.1 even as per the agreement. It is in these circumstances, the learned Judge of the Co-operative Court allowed the dispute as filed by respondent No.1 by directing the society to correct the maintenance bill by showing correct flat number. However, such correction in the maintenance bill was felt prejudicial by the petitioner and hence, the petitioner had approached the Co-operative Appellate Court, although there were no directions whatsoever of the learned Judge of the Co-operative Court to modify any of the bills being issued to the petitioner.

8. The learned Judge of the Appellate Court considering such anomaly, has ordered that in so far as the monthly bills are concerned, they be issued in the manner as set out in the impugned order. The order is confined only to the issuing of monthly bills. The order does not in any manner, alter any right, title and interest of either petitioner

or respondent No.1 in regard to their respective flats, which they possess and own.

9. Although the situation is quite peculiar, I do not find that there is any infirmity or perversity in the approach of the learned President of the Co-operative Appellate Court in issuing such directions.

10. The impugned order does not call for any interference in the writ jurisdiction of this Court. The petition is accordingly rejected. No costs.

11. It is however clarified that it would be open to the petitioner, respondent and the Society to come to any amicable resolution if the need is felt in that regard, in the spirit of true co-operation, instead of parties litigating on such trivial issues.

12. As petition is disposed of, pending Civil Application would not survive. It is accordingly, disposed of.

(G. S. KULKARNI, J)