

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

WRIT PETITION NO. 13716 OF 2022

M/s. Sweet Home Interior Pvt. Ltd.

...Petitioner

Versus

Archana Kutir Co-operative Housing Society Ltd. . . .Respondent

...

Mr. Ashish T. Suryavanshi, for Petitioners.

Mr. N. N. Bhadrashete, Ms. Priyanka N. Bhadrashete for Respondent Society.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 29 SEPTEMBER 2023.

ORAL ORDER:

By this petition Petitioner challenges order dated 03 December 2021 passed by the Co-operative Court, Mumbai rejecting application filed by the Petitioner for recalling the witness of the Disputant-Society for further cross-examination. While rejecting Petitioner's application for recall of witness, Co-operative Court directed Dispute No.3191 of 1993 (New Dispute No.282 of 2014) and Dispute No.313 of 2010 (New Dispute No.439 of 2014) be clubbed and tried together. Petitioner challenged order of the Co-operative Court before the Co-operative Appellate Court by filing Revision Application No.03 of 2022. By order dated 29 April 2022 the Co-operative Appellate Court has not granted the relief of recall of witness in favour of the Petitioner.

but has directed that instead of clubbing two disputes together, both the disputes should be fixed on the same day. Petitioner is aggrieved by the non-grant of his prayer for recall of witness of the society for cross-examination. He also challenges order dated 29 April 2022 passed by the Co-operative Appellate Court by which Revision Application No.03 of 2022 challenging order of Co-operative Court has been rejected.

2. I have heard learned counsel appearing for Petitioner and learned counsel appearing for Respondent Society.

3. The main grouse of Petitioner is that during the course of cross-examination of the witness of the Disputant-Society, specific question was asked to him as to whether Society had filed on record any resolution by which maintenance charges were charged, increased and revised. The witness had answered the question in negative. It is Petitioner's case that after closer of the evidence of the Disputant-Society, and while the evidence of the Petitioner was underway, the Society filed Application on 10 March 2015 seeking to entertain 03 new documents. Apparently those 03 documents were shown to the witness of the Petitioner and after recording the evidence of Petitioner's witness, these 03 documents have been marked in evidence. Petitioner feels that since those documents are now marked in evidence, which were earlier not produced by the Disputant-Society, Petitioner has been denied opportunity of cross-examining the Disputant-Society's witness in respect of those 03 documents.

4. It appears that the Petitioner wants the Society to place on record the relevant resolutions by which the maintenance charges have been levied, increased and revised from time to time. It is Petitioner's case that said resolutions are not placed on record. However what sought to be placed on record are certain communications to prove that those resolutions have been supplied by the Society to the Petitioner.

5. Production of the concerned resolutions before the Co-operative Court is one thing and factum of proving that those documents were supplied to Petitioner in the past is an altogether different thing. Even after filing the documents on 10 March 2015 the position remains unchanged that Disputant-Society has still not placed the concerned resolutions on record. Therefore it cannot be stated that the very documents on which admission was given by the Society's witness during cross-examination have subsequently been produced by the Society. Therefore it is not necessary to recall the Society's witness for further cross-examination.

6. I do not find any merit in the petition, which dismissed without any order as to costs.

SANDEEP V. MARNE, J.

**KISHOR
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