



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

WRIT PETITION NO.3512 OF 2023

Mrs. Swati Dilip Jadhav

...Petitioner

Versus

Aditi Co-operative Hsg. Soc. Ltd.

...Respondent

Mr. Vikas B. Shivarkar, for the Petitioner.

Mr. Ganesh Murthy, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 5th SEPTEMBER 2023

P.C. :

1. Heard Mr. Vikas B. Shivarkar, learned counsel appearing for the Petitioner and Mr. Ganesh Murthy, learned counsel appearing for the Respondent.

2. By way of the present Writ Petition, the Petitioner who is the member of the Respondent-society is challenging the legality and validity of the impugned order dated 30th July 2022 passed by the learned Judge, Co-operative Court, Thane below Exhibit-12 in Dispute No.CCT/97 of 2022. The said application below Exhibit-12 has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908.

3. It is the contention of Mr. Shivarkar, learned counsel appearing for the Petitioner that the dispute is concerning alleged encroachment by the Petitioner-member and therefore, such type of dispute will not come under the purview of Section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as **“the said Act”**).

4. However, the learned Judge, Co-operative Court after perusal of the dispute has held that the dispute is covered under Section 91 of the said Act.

5. Learned counsel appearing for the Petitioner has relied on paragraph 7 of the dispute to substantiate his contention that the dispute will not come under the purview of Section 91 of the said Act. According to the learned counsel of the Petitioner, the said alleged act will not attract Section 91 of the said Act. The said paragraph 7 reads as under:-

“7. The Disputant states that, to the shock and surprise of the office bearers of the Disputant Society, **the Opponent structurally damaged the external structure of the building, removed the column and beam, machine cut the in-way concrete-binding MS rods in an illegal attempt to convert the bedroom and kitchen into galas and usurped the**

common area of the Society inside that flat, despite stiff resistance by the office bearers of the Society. The office bearers of the Disputant society filed a complaint before the 2/B Ward Officer Kalyan for restoring the massive illegal activities committed by the opponent in her flat and on the common premises of the Disputant society. Few photographs showing the massive structural damage committed by the Opponent to the building of the society and external wall are enclosed herewith.”

(Emphasis added)

Thus, the Respondent-society has stated in the dispute that the Petitioner structurally damaged the external structure of the building, removed the column and beam, machine cut the in-way concrete-binding MS rods and usurped the common area of the society inside the flat.

6. Section 91 of the said Act inter alia contemplates any dispute between society and its member, past member or person claiming through a member touching the management or business of society shall be referred by any of the parties to the dispute to the Co-operative Court. Certainly protection and maintenance of the building of the society is within the purview

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of the management or business of the society. Thus, in this case the dispute cannot be rejected by exercising power under Order VII Rule 11 of the Code of Civil Procedure, 1908.

7. Accordingly, there is no substance in the Writ Petition challenging the order dated 30th July 2022 passed by the learned Judge, Co-operative Court, Thane below Exhibit-12 in Dispute No.CCT/97 of 2022. The Writ Petition is dismissed, however with no order as to costs.

[MADHAV J. JAMDAR, J.]