

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 35065 OF 2023**

Dinesh R. Jain and Ors ... Petitioners

VS.

Bindiya Co-op. Hsg Society Ltd and Ors ... Respondents

Mr. S.C. Naidu, Senior Advocate a/w. Sudesh Naidu and Pradeep Kumar i/b. Arsh Misra, for Petitioners.

Ms. Priya Rombade i/b. Bharat Joshi for Respondent nos. 4 and 5.

Mr. Mehul Shah, for Respondent nos. 2 and 3.

CORAM : GAURI GODSE, J.

DATED : 15th APRIL 2024

P.C. :-

1. Heard. Arguable points are raised. Hence, 'Rule'. Rule on interim relief in terms of prayer clause (b) is made returnable after ten weeks.

2. Ms. Rombade waives notice on behalf of respondent nos. 4 and 5. Mr. Shah waives notice on behalf of respondent nos. 2 and 3.

3. Learned counsel for the petitioners submits that though the dispute was contested by the office bearers of the society, by the

impugned order, the petitioners are directed to pay costs to respondent nos. 2 and 3. He submits that the petitioners are agreeable to pay costs to respondent no.1-society as the dispute was filed against the society and respondent nos. 2 and 3 were never made party in their individual capacity.

4. Learned counsel for the petitioners relied upon the order passed on 10th April 2024 in Writ Petition No. 13545 of 2023. Learned counsel appearing for respondent nos. 2 and 3 is not agreeable to the suggestions given by the petitioners for making payment of cost to the society on the ground that they were contesting dispute in their individual capacity. *Prima facie*, I am of the view that the respondent nos. 2 and 3 were contesting the dispute as office bearers of the society and not in their individual capacity.

5. Learned counsel for the petitioners points out letter dated 25th April 2017, submitted by respondent nos. 2 and 3 stating that they are withdrawing from the dispute and hence, they had intimated their advocate regarding discharge. In view of the aforesaid, *prima facie*, I do not find any reason for awarding cost to respondent nos. 2 and 3 in individual capacity.

6. Even otherwise, petitioners had shown willingness to pay the

entire amount of cost to respondent no.1-society. Hence, subject to petitioners depositing the entire amount of cost in this court within four weeks from today, there will be ad-interim stay in terms of prayer clause (b) which reads thus:-

(b) Pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the effect, operation, implementation & execution of directions contained in Paragraph Nos. 5 and 6 of the impugned order dated 12th October 2023.

6. Stand over to 24th June 2024.

(GAURI GODSE, J.)