



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5939 OF 2024

Mr. Mahesh K Mehta, age 74 years, }
Residing at Flat No.45, }
Sadhana, 'B' Road, Churchgate }
Mumbai – 400 020 } **... Petitioner.**

Versus

The Bharatiya Friend's Co-operative }
Housing Society Ltd., }
A Society Registered under the Bombay }
Co-operative Societies Act, 1925 }
And is deemed to be regiered under }
The Maharashtra Co-opearative Societies }
Act, 1960 having its registered office at }
"Sadhana, 'B' Road, Churchgate, }
Mumbai – 400 020. } **... Respondents.**

Mr. Meezan Patel, Advocate for the Petitioner.
Mr. Khushal Amin, Mr. Smeet Savla i/by S.K.Srivastav & Co. Advocates for
Respondent.

Coram : Sharmila U. Deshmukh, J.
Reserved On : November 28, 2024
Pronounced On : December 20, 2024

JUDGMENT :

1. Vide order dated 14th June, 2024 Rule was issued by this Court and by way of interim relief, the Petitioner was permitted to carry on the activity of giving the bedrooms for occupation on consideration during the pendency of the Petition.

THE CHALLENGE:

2. The orders dated 22nd November, 2023 and 2nd March, 2023 passed by the Maharashtra State Co-operative Appellate Court in Appeal proceedings and Review proceedings respectively confirming the order dated 4th May, 2022 passed by the Co-operative Court No.1, dismissing the Petitioner's interim application for maintaining *status quo* are under challenge.

FACTUAL MATRIX:

3. By instituting Dispute No.52 of 2014 under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "MCS Act"), the Petitioner, who is member of the Respondent Society and residing in Flat No 45 situated on the 4th Floor of the building, challenged the Resolutions passed by the Respondent-Society in the Annual General Meeting dated 10th August, 2008, 11th August, 2013, 28th September, 2014 and 2nd August, 2015 and the Special General Body Meeting of 27th April, 2014 and 6th July, 2014 *inter alia* resolving that the commercial activities of keeping foreign paying guests for short period under the "Incredible India Bed and Breakfast" scheme should not be allowed in the Society.

4. As and by way of interim relief, the Petitioner sought order of temporary injunction restraining the Respondent Society from stopping, interrogation and blocking the Petitioner's foreign/Indian guests from entering the Society and his residence. Vide order

dated 28th October, 2015, the interim application was allowed and confirmed by the Appellate Court by order dated 25th February, 2016. The Respondent Society preferred Writ Petition No.5399 of 2016 before this Court and vide order dated 4th July, 2016, the Petition came to be admitted and the order of injunction against the Respondent came to be stayed as and by way of interim relief. The interim relief granted by the High Court by order dated 4th July, 2016 was challenged by the Petitioner before the Apex Court and on 24th March, 2017, the Special Leave Petition (SLP) came to be dismissed.

5. Vide order dated 16th February, 2023, this Court disposed of the Writ Petition No.5399 of 2016 directing the Co-operative Court to dispose of the Dispute on or before 31st March, 2024 and continued the interim order passed on 4th July, 2016 as interim order till disposal of the Dispute and directed that if parties have any other contentions to raise, appropriate Application may be filed before the Co-operative Court. The order of 16th February, 2023 was challenged by the Petitioner before the Apex Court and the SLP came to be dismissed on 24th November, 2023, as against which the Review Petition was dismissed by the Apex Court on 13th March, 2024.

6. Apart from the Dispute initiated before the Co-operative Court, the Petitioner also instituted proceedings before the District

Consumer Disputes Redressal Forum ("**DCDRF**") seeking injunction restraining the Society from obstructing the Petitioner from permitting paying guests/licensees in the flat premises which came to be dismissed by the DCDRF by order dated 22nd December, 2014 as against which the Appeal filed before the State Consumer Disputes Redressal Commission ("**SCDRC**") was partly allowed by order dated 22nd February, 2016 permitting the Petitioner to keep paying guests/licensees subject to certain conditions, which order was challenged by the Petitioner as well as the Respondent-Society before the National Consumer Dispute Redressal Commission ("**NCDRC**"). By order dated 24th April, 2018, the Revision Petition filed by the Society was allowed setting aside the order of SCDRC dated 22nd February, 2016 and the Revision Petition filed by the Petitioner was dismissed. Against the order of NCDRC, Review Petition was filed which was dismissed on 24th August, 2018. The Special Leave Petition filed before the Apex Court by the Petitioner came to be dismissed.

7. In the meantime, the Respondent-Society filed Writ Petition No.1399 of 2016 for challenging the guidelines framed by the Ministry of Tourism (H&R) Division's Government of India under the "Incredible India Bed and Breakfast/ Home stay Establishment" scheme as the same did not provide for obtaining consent and NOC from the Society where the flat is situated. By order dated 7th June, 2017, the Division Bench of this Court disposed of the Petition in

view of the Petitioner's Affidavit stating that all relevant details of the guests are forwarded to the Police Station and the Respondent-Society.

8. On 6th April, 2023, the Petitioner filed an Interim Application in Dispute CC/1/52/2014 for direction to the Respondent-Society to maintain *status quo* as it existed on 5th March, 2023 and not to take any steps/action against the Petitioner till the dispute is decided as per the timeline set out by the High Court. The application came to be opposed by the Respondent-Society. Vide order dated 4th May, 2022, the Co-operative Court rejected the Application against which the Appeal preferred by the Petitioner came to be dismissed on 22nd November, 2023 and the Review Petition was dismissed on 2nd March, 2024 leading to filing of the present Petition.

SUBMISSIONS:

9. Mr. Patel, learned counsel appearing for the Petitioner has taken this Court through the various orders passed in the previous litigation between the parties. He would submit that the Respondent Society is constructed on property leased by the Collector and the lease deed does not prohibit keeping paying guests which is substantiated by the opinion of the Law and Judiciary Department. He would further submit that from the year 2017 to 2023, the Petitioner is keeping paying guests in the said flat, which was permitted by the High Court vide order dated 7th

June, 2017 passed in the Petition filed by the Society challenging the guidelines. He submits that the necessity for preferring application for maintaining *status quo* arose as on 6th March, 2023, the Respondent Society issued notice cautioning the Petitioner against keeping paying guests failing which action would be taken. He submits that the Appellate Court has rejected the Appeal on the ground that the Petitioner had not produced the copy of his passbook to establish that from 2017 onwards he was regularly keeping foreign paying guests in his flat and has not produced the copy of license to show that he has renewed his license issued by the Department of Tourism. He submits that it is not in dispute that he has been keeping paying guests from the year 2017 and in the Review Application, the emails sent to the Society giving details of the guests were produced, however, the Appellate Court dismissed even the Review Application. He would further submit that it was a specific case in the written arguments of the Petitioner that his paying guests are not licensees and therefore Bye-laws 45 will not be applicable. He submits that the livelihood of the Petitioner depends on the income received from the paying guests and the fundamental rights of the Petitioner are infringed. He submits that despite the main Dispute being made time bound and directed to be decided by 31st March, 2024, the matter is still pending. In support, he relies upon following decision:

- (i) ***Miss Dinoo F. Byramji vs. Mrs.Dolly Jahangir Ranji, [1988 (1) Bom.C.R.587];***
- (ii) ***Feroze N. Dotivala vs. P.M. Wadhwani and Ors. [2002 Supp (4) SCR 416].***

10. *Per contra*, Mr.Amin, learned counsel appearing for the Respondent would submit that the Petitioner is not keeping paying guests but is running lodging and boarding under the “AIR BnB” Scheme. He submits that the Resolutions passed by the Society have not been stayed by any Court. He submits that in view of the previous orders passed on the Application seeking restraint orders against the Society, the present Application for *status quo* was barred by principles of *res judicata*. He submits that the order of 16th February, 2023 continued the interim relief till the pendency of the Dispute and therefore there was no injunction against the Society from obstructing the Petitioner’s business of lodging and boarding. He supports the findings of the impugned order based on the orders passed in previous round of litigation. Drawing support from ***Harmesh Singh Chadha @ Jimmy vs. Municipal Corporation of Greater Mumbai, passed in Appeal from Order No.274 of 2022***, he submits that under Section 394 of the Mumbai Municipal Corporations Act a license is required for running a business of lodging and boarding, which has not been obtained by the Petitioner. He would further submit that the Petitioner had furnished an undertaking to use the premises for residential purpose at the time of purchase of the flat. He submits that the

order of 7th June, 2017 passed by the High Court in Respondent Society's Petition did not issue any direction in favour of Petitioner. He submits that all orders passed in the previous litigation have been challenged right upto Apex Court and there has no relief granted in favour of the Petitioner. He submits that there is no question of the livelihood of the Petitioner being affected as the Petitioner is a Chartered Accountant and an Advocate. In support he relies upon the following decisions:

- (i) ***B.K. Muniraju vs. State of Karnataka [(2008)4 SCC 451];***
- (ii) ***Arjun Singh vs. Mohindra Kumar [1963 SCC OnLine SC 43];***
- (iii) ***Decision of this Court in Harmesh Singh Chadha @ Jimmy vs. Municipal Corporation of Greater Mumbai, passed in Appeal from Order No.274 of 2022 dated 14th June, 2022]***

11. In rejoinder, Mr. Patel submits that the decision in the case of ***Harmesh Singh Chadha @ Jimmy*** (supra) is distinguishable on facts as in that case the business of lodging and boarding was being carried out. Drawing support from decision of ***Feroze N. Dotivala*** (supra) and ***Miss Dinoo F. Byramji*** (supra), he submits that the fact that the Petitioner is residing in the said premises shows that there is no lodging and boarding business being run to apply for permission.

REASONS AND ANALYSIS:

12. The Trial Court as well as the Appellate Court has refused the discretionary interim relief of status quo to the Petitioner. Whether the refusal to exercise discretion is required to be interfered in exercise of powers under Article 227 of Constitution of India is the question.

13. The effect of grant of status quo would amount to permitting the Petitioner to carry on the activities of keeping guests in the flat premises under the “Incredible India Bed and Breakfast/ Home stay Establishment” scheme or as is popularly known as “AIR BnB” scheme.

14. The earlier round of litigation originating from the Petitioner’s interim application seeking restraining orders against the Society from obstructing the Petitioner’s foreign/Indian guests from entering the Society, which attained finality by the dismissal of the SLP against the order of 16th February, 2023, culminated in the continuation of interim order of stay against the restraint orders imposed upon the Society till disposal of the Dispute. The consequence of the stay of the restraint order is that the Society was not prohibited in taking action against the Petitioner. By notice dated 6th March, 2023, the Respondent Society sought to implement its resolution and called upon the Petitioner to restrain from keeping paying guests by notice dated 6th March, 2023 failing

which necessary action will be taken.

15. The case of the Petitioner in the interim application is that he has been keeping paying guests for last several years and even before the order of 4th July, 2016. The application pleads that the activity of keeping paying guest is legal and not a commercial activity by relying upon the opinion of Law and Judiciary Department. The Petitioner premised his application on the ground that the clarification of the Collector that paying guest is permitted as per the lease deed and is not a commercial activity shows that *prima facie* the impugned resolutions are illegal.

16. The Trial Court while dismissing the Application by order dated 4th May, 2022 has considered the orders passed in earlier round of litigation and continuation of interim relief by the order dated 16th February, 2023 and noted that there is no renewal of the license by the Petitioner.

17. The Appellate Court noted that the stay granted by the High Court to the restraint orders against the Society is in existence till date. The Appellate Court considered that the order of the Bombay High Court dated 7th June, 2017 and noted that it did not issue any direction in favour of the Petitioner and that documents are not produced to show that as per the order dated 7th June, 2017, the paying guests are kept in his flats and that there is no renewal of license.

18. It is thus clear that both the Courts took into consideration the stay on the restraint orders against the Society continued by this Court till the disposal of the Dispute.

19. By re-phrasing the relief in the instant interim application, in effect the Petitioner sought to re-agitate the same cause which was subject matter of the earlier round of litigation and had attained finality. Mr.Amin would contend that the instant application would be barred by principles of *res judicata*. Although it is well settled that the principles of *res judicata* will apply to different stages of the same proceedings, the applications are interlocutory applications capable of being varied upon change of circumstances being demonstrated. In the decision of **Arjun Singh vs Mohindra Kumar and Others** (supra), the Apex Court in context of applicability of principles of *res judicata* to interlocutory applications has held in paragraph 14 as under:

“14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief,

though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of the parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of court.....”

20. The Apex Court therefore made a distinction between the differing nature of interlocutory applications for applicability of principles of *res judicata*. Admittedly in the present case, the earlier relief sought injunction against the Society whereas the instant interim application sought order of *status quo* and applying the law laid down by the Apex Court, the instant application was not barred by *res judicata*. Irrespective of the legal objection taken to the instant application, whether any case for grant of interim relief is made out by the Petitioner is required to be considered.

21. Under Section 95(4) of MCS Act, the Co-operative Court is empowered to make such interlocutory orders pending the final decision as may appear to be just and convenient. The contention of Petitioner was that he was keeping paying guests since the year 2017 and pending the final disposal of the Dispute, he should not be obstructed from continuing the said activity. Under Section 72 of MCS Act, the final authority of every society vests in the general

body of the members subject to the provisions of the Act and the Rules. It is the General Body which has the power to take all steps as deemed effective for proper administration of the Society. Unless it is *prima facie* demonstrated that the Resolutions passed by the Society are contrary to the statutory provisions and thus illegal, the implementation of the Resolutions at the hands of the Society cannot be stayed. The reliance placed on the lease deed and the opinion of Law and Judiciary Department to contend that the activity carried out by the Petitioner is not prohibited does not assist the case of the Petitioner as despite absence of any such prohibition in the lease deed, the majority may decide that a particular activity, though not prohibited, is not in best interest of all the members. It is the will of the majority that led to the passing of the Resolutions in the General Body meeting. The continuation of the activity of keeping paying guests was not established before the Trial Court as no documents were produced to support the said contention. If the Petitioner claimed the relief of status quo to protect his continuing activity of keeping paying guests, it was necessary for the Petitioner to establish the same. The order of the Appellate Court reflects a finding that no documents were produced to show that he was regularly keeping paying guests. Although it was contended by Mr. Patel that the documents were produced in Review Petition and the fact of the Petitioner keeping paying guest is not disputed, the Appellate Court has refused to

review the order as the same did not fall within the parameters of Order 47 Rule (1) of CPC.

22. What assumes significance is that there is no material to demonstrate that the Resolutions which prohibited the Petitioner's activity are *prima facie* illegal. It is impossible to find out from the facts of the present case a *prima facie* case in favour of the Petitioner.

23. The Trial Court and the Appellate Court has rightly taken into consideration the orders passed in earlier round of litigation while rejecting the application for grant of status quo. An effort was made in earlier round of litigation to prevent the Society from taking any steps against the Petitioner's activity, which orders remain stayed. The effect of grant of status quo will in fact amount to placing restraint on the Society from prohibiting the Petitioner's activity, which restraint orders were subject matter of earlier round of litigation and decision is in favour of the Society. By re-phrasing the relief, the effect of the earlier orders which have attained finality upto the Apex Court, are sought to be wiped out which is impermissible and in light thereof, no interim relief of grant of status quo could be granted.

24. The reliance placed by the learned counsel for the Petitioner on the order of 17th June, 2017 as permission to the Petitioner to continue to keep paying guests is clearly misplaced.

Firstly, the Petition was filed by the Respondent-Society challenging the guidelines framed by the Government of India Ministry of Tourism on the ground that the same did not provide for obtaining of consent of the Co-operative Society. By order of 7th June, 2017, this Court in view of the affidavit filed by the Petitioner disposed of the Petition. Upon my reading of the order of 7th June, 2017, it does not appear that the said order permitted or refused to permit the Petitioner from keeping paying guests in the said premises. By the said order, the Petition came to be disposed of without any directions either way.

25. The Appellate Court has also held against the Petitioner on the ground that there was no renewal of license of the Petitioner. The Petitioner had been granted a license for running the said business under the tourism promotion scheme i.e. "Incredible India Bed and Breakfast Establishment", however, it is not disputed that the said license which was granted was not renewed from 8th May, 2018 and therefore, even otherwise, the said activity cannot be permitted to be carried out without the license being renewed. The balance of convenience is not in favour of the Petitioner.

26. It is not necessary for this Court to go into the issue as to whether the activity carried out by the Petitioner amounts to running a lodging and boarding business or keeping of paying guests or requires any license under the Municipal Corporations Act as the proceedings before this Court arises out of interlocutory

orders. As the Resolutions are not shown to be *prima facie* illegal, till they are set aside by Competent Forum, they will continue to bind the Petitioner.

27. In light of the discussion above, I find no reason to interfere with the discretion exercised by the Co-operative Court and Appellate Court. It is settled by decisions of Apex Court that in exercise of power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken is possible. I am thus not inclined to interfere in Article 227 of Constitution of India with the concurrent orders particularly in the absence of any perversity demonstrated in the discretion exercised by the Trial Court and Appellate Court.

28. Resultantly, Petition stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]

29. At this stage, request is made for extension of the ad-interim relief which was operating since 14th June, 2024. Learned counsel for the Respondent-Society opposes the Application. As the interim relief was operating since June, 2024, the same is extended for a period of four weeks. It is made clear that no further time will be granted.

[Sharmila U. Deshmukh, J.]