ANANT KRISHNA NAIK
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2564 OF 2019

Om Prakash Rao ....Petitioner
V/s
Kamana CHS Ltd. & Ors. ....Respondents

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Mr. Uday Warujikar (through VC) a/w. Mr. Sumit Kate and Mr. Jenish Jain for Petitioner.
Mr. Harish R. Pawar for Respondent Nos. 3(a) to 3(d).

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CORAM : M. M. SATHAYE, J.

DATED : 9th DECEMBER 2025

P.C.:

1. Heard learned counsel for the parties. Perused the records.

2. The Petitioner is challenging the order dated 27/02/2018 passed by the Maharashtra State Co-operative Appellate Court, Mumbai in R.A. No. 06 of 2018, by which the revision application is dismissed, confirming the order dated 25/10/2017 passed below Exh. 36 in Dispute No. 531 of 1994 by IIIrd Co-operative Court, Mumbai. By order dated 25/10/2017, the objection raised by the Petitioner about filing of written statement and affidavit of examination-in-chief by the legal heirs of Respondent No. 3, was rejected.

3. The Petitioner is the eldest son of the deceased Respondent No. 3. Petitioner filed the said dispute pertaining to flat nos. 35 and 36 in the Respondent No. 1-Co-operative Housing Society. The dipute is pending.

4. Learned Counsel for the Petitioner submitted that after the death of Respondent No. 3, the written statement filed by her legal heirs and

representatives - Respondent Nos. 3(a) to 3(d) and their affidavit in support of said case cannot be considered. It is submitted that legal heirs cannot be permitted to take defence which is beyond their character. That the defence raised about payment of consideration by the parents, about release of share in the subject matter flats amongst the Respondent Nos. 3(a) to 3(d) and about conversion of two flats into one flat, are not permitted to be taken in view of provisions of Order 22 of Civil Procedure Code, 1908 (**CPC**).

5. On the other hand, learned counsel appearing for Respondent Nos. 3(a) to 3(d) supported the impugned order, contending *inter alia* that the defence raised in the written statement filed by the legal heirs of the Respondent No. 3 are well within the legal parameters. He submitted that the defence about consideration paid by the parents as well as conversion of 2 flats into one flat was already pleaded in the original written statement by the Respondent No. 3. He submitted that so far as release of share in the suit flats amongst the legal heirs of Respondent Nos. 3(a) to 3(d) is defence permissible under Order 22 Rule 4(2) of CPC. He submitted that no interfere is required in the concurrent findings by the Courts below.

6. I have considered the submissions and perused the records.

7. The Petitioner and Respondent Nos. 3(a) to 3(d) are real brothers and sisters and Respondent No. 3 was their mother.

8. It is necessary to note that paragraph 8 and 10 of the written statement filed by the Respondent No. 3, who is mother of the disputing parties, clearly indicate that the mother itself has taken a stand that she and her Husband has contributed for the purchase of the suit flats and they were converted into one flat by making suitable changes. In that view of the

matter, on facts, the stand taken by the legal heirs is nothing new and is the re-iteration of the original stand taken by the mother.

9. So far as the stand of Respondent Nos. 3(a) to 3(d) that amongst them, Respondent Nos. 3(a), 3(c) and 3(d) i.e. one brother and 2 married sisters have released their shares in suit flats in favour of brother Respondent No. 3(b)-Nityaprakash, is an arrangement between the legal heirs, squarely falling within the term 'defence appropriate to character of the legal representative' as provided under Order 22 Rule 4(2) of CPC

10. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the Revisional Court has considered the submissions and after considering the judgement of the Hon'ble Supreme Court regarding the scope of defence that can be raised by the legal representative, has considered the defence as set out by the legal heirs. Both the Co-operative Court as well as Appellate Court has come to the conclusion that the objections raised by the Petitioner is not sustainable and as such it was rejected.

11. In the aforesaid facts circumstances, there is no perversity in the impugned order. The view taken and conclusions drawn in the impugned order are most probable. Therefore, no case for interference in the writ jurisdiction of this Court is made out.

12. The petition is accordingly dismissed. Interim/ad-interim relief granted earlier, if any, stands vacated.

13. Considering that the dispute is pending from 1994, concerned Co-operative Court in Mumbai is directed to hear and dispose of the dispute expeditiously, within a period of 1 year from receipt of this order.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)