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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6716 OF 2024

Dinesh R. Jain & Ors. … Petitioners

V/s.

Bindiya Coop. Housing Society Limited & Ors. … Respondents

ATUL GANESH KULKARNI
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Date: 2025.12.09 17:34:59 +0530

Mr. S.C. Naidu with Mr. Manoj Gujar and Mr. Pradeep Kumar i/by Mr. Arsh Misra for the petitioners.

Mr. Mehul Shah for respondent Nos.2 and 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 9, 2025

P.C.:

1. The present writ petition questions the legality of the direction issued by the Appellate Court imposing costs upon the petitioners while permitting withdrawal of the dispute. Clause 3 of the impugned order allows the petitioners to withdraw the dispute. Clause 5 directs the petitioners to pay an amount of forty thousand rupees to respondent Nos. 2 to 5 within thirty days from the date of the order. The said direction to pay costs is the subject matter of challenge before this Court.

2. Learned counsel Mr. Naidu, appearing for the petitioners, submits that the Appellate Court has assigned no reasons for imposition of costs. He submits that the few observations made by the Appellate Court do not satisfy the well settled principles laid down by this Court and the Supreme Court on the issue of

awarding costs when a party seeks to withdraw a dispute. He submits that the order shows no application of mind to the governing principles.

3. He further submits that the grievance raised by the petitioners in the original dispute was founded on a serious legal objection. The challenge before the Cooperative Court pertained to the decision of the society converting tenancy rights into ownership. According to the petitioners, the society lacked statutory authority, and no such power flowed from the Rules or the Bye-laws. The petitioners, as members of the housing society, had invoked the dispute jurisdiction to ensure that the affairs of the society were conducted in accordance with law. He submits that such action was bona fide. He submits that the Appellate Court ought not to have treated the withdrawal as an abuse of process. He submits that imposition of costs in such circumstances is arbitrary and amounts to an excessive exercise of jurisdiction.

4. Learned counsel Mr. Shah, appearing for respondent Nos. 2 and 3, opposes the writ petition. According to him, the petitioners have a consistent record of initiating frivolous litigations. He submits that respondent Nos. 2 and 3 were compelled to incur substantial legal expenditure in defending such proceedings. He submits that the Appellate Court has rightly imposed costs to compensate respondent Nos. 2 and 3 for avoidable expenses and to ensure responsible conduct in future.

5. On careful scrutiny of the record, the factual position is clear. During the pendency of the dispute, the society itself superseded

the resolution which formed the very foundation of the challenge. The petitioners, therefore, sought withdrawal of the dispute. This course of action cannot be faulted. When the impugned resolution stood substituted by a fresh resolution of the general body, the substratum of the dispute ceased to exist. The dispute lost its efficacy in law. In such a situation, withdrawal of the dispute was a natural and reasonable consequence. No party can be compelled to pursue adjudication on an issue that has extinguished by operation of subsequent events.

6. In my view, this circumstance constitutes sufficient cause for permitting withdrawal without any adverse consequence. The petitioners had approached the Cooperative Court with a challenge that, on the face of the record, raised a legitimate legal issue concerning the authority of the society to convert tenancy into ownership. The dispute cannot be described as vexatious. It was neither speculative nor intended to harass any party. The intervention of the society by superseding the earlier resolution stands as a clear acknowledgment that the original decision required reconsideration. Proceedings that become infructuous by act of the opposite party or by change in circumstances cannot be treated as frivolous proceedings warranting penal costs.

7. In this backdrop, the Appellate Court's direction imposing costs under clause 5 does not satisfy the test of sound judicial discretion. Costs can be awarded only when the conduct of the party withdrawing proceedings is blameworthy. The material on record does not indicate any mala fides, nor does it disclose any attempt to misuse the judicial process. Rather, the petitioners acted

with due responsibility in withdrawing the dispute once its cause disappeared.

8. In these circumstances, the imposition of forty thousand rupees as costs on the petitioners is unjustified. Clause 5 of the Appellate Court's order suffers from lack of proper reasoning. It proceeds on an assumption that the dispute initiated by the petitioners was frivolous, a conclusion unsupported by any legal or factual foundation. The order, to that extent, cannot be sustained.

9. I am, therefore, of the considered view that clause 5 of the order passed by the Appellate Court merits interference. The said clause is required to be set aside.

10. Rule is made absolute in terms of prayer clause (a). No costs.

11. The amount deposited by the petitioners shall be allowed to be withdrawn by the petitioners along with accrued interest, if any.

(AMIT BORKAR, J.)