

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

WRIT PETITION NO.808 OF 2024

Gajanan Shridhar Berde

....Petitioner

V/S

Krypton Tower Co-operative
Housing Society Limited

....Respondent

**WITH
CONTEMPT PETITION NO.353 OF 2024**

Gajanan Shridhar Berde

....Petitioner

V/S

Girish Vaze, the Chairman
Krypton Tower Co-operative
Housing Society Limited

....Respondent

Dr. Uday P. Warunjikar with Mr. Siddharth Pilankar i/b
Mr. Aditya P. Kharkar and Mr. Sumit S. Kate *for the Petitioner.*

Mr. Rohan Sawant with Ms. Hetal J., Mr. Shivaji Prasad i/b
M/s. Jayhkar & Partners *for Respondent.*

Ms. Snehal S. Jadhav, AGP *for Respondent / State in Contempt
Petition.*

*Mr. Vishwakarma, Treasurer of Krypton Tower CHSL present in
Court.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 21 MARCH 2025.**

P.C.:

1. Writ Petition No.808 of 2024 is filed challenging the
judgment and order dated 29 September 2023 passed by Co-

operative Appellate Court by which the interim order dated 7 January 2023 passed by the Co-operative Court has been substantially set aside. By order dated 7 January 2023 the application for interim injunction was allowed by the learned Judge of the Co-operative Court in terms of prayer clauses 4(a) to 4(e). The learned Judge of the Co-operative Appellate Court has modified the said interim order by setting aside the injunction in terms of prayer clauses 4(a) to 4(d) while maintaining the interim injunction in respect of prayer clause 4(e) only.

2. For better understanding of the exact relief that was initially granted by the Co-operative Court and which has been substantially rescinded by the Co-operative Appellate Court, it would be appropriate to reproduce the prayers made in the Interim Application:

“a) Pending the hearing and final disposal of this Dispute, this Hon'ble Court be pleased to restrain and prohibit the Opponent Society, its Agents, Servants, Committee Members, person or persons claiming through, under or on behalf of it from acting upon the alleged purported Resolutions allegedly passed in the SGM dated 19/09/2021 in respect of parking spaces as well as recovering charges from the commercial shop owners.

b) Pending the hearing and final disposal of this Dispute, this Hon'ble Court be pleased to order and direct the Opponent Society to allot to the Disputant and allow to enjoy him one covered parking space out of totally 11 parking spaces which are approved for commercial shops by the Mumbai Municipal Corporation for his convenient user within the premises of the Opponent Society.

- c) Pending the hearing and final disposal of this Dispute, this Hon'ble Court be pleased to order and direct the Opponent society to allow to use the common toilet facility existed on 1st floor of the Opponent society to the Disputant and their servants;
- d) Pending the hearing and final disposal of this Dispute, this Hon'ble Court be pleased to order and direct the Opponent society to accept the maintenance charges in respect of Shop No.4 from the Disputant and to issue receipt for the same;
- e) Pending the hearing and final disposal of this Dispute, this Hon'ble Court be pleased to order and direct the Opponent Society to provide the inspection of record pertaining to allotment of car parking space to its members and also to provide certified copies thereof to the Disputant at his cost;”

3. This Court has admitted the present Petition by order dated 6 March 2024. During pendency of the present Petition, the order passed by the Co-operative Appellate Court has been stayed, which has the effect of revival of the order passed by the Co-operative Court.

4. Petitioner has filed Contempt Petition No.353 of 2024 alleging breach of the order passed by the Co-operative Court read with the interim order passed by this Court on 6 March 2024.

5. During the course of hearing of Contempt Petition, the Respondent-Society has, without prejudice to its rights and contentions, shown willingness to allot one visitor car parking (the one facing the ramp) on the ground floor to the Petitioner during pendency of the Writ Petition.

6. The Writ Petition arises essentially out of interim order passed by the Co-operative Court. The main Dispute is still pending. Since the Society has shown willingness to allot one visitor car parking space to the Petitioner, the major grievance of the Petitioner raised in the main Writ Petition is met with at this juncture.

7. Dr. Warunjikar would submit that prayer clauses 4(b), (c) and (d) of the Interim Application have already been complied with by the Society. What remains is small part of prayer clause of 4(a), which pertains to recovery of charges from commercial shop owners. It is the insistence of the Petitioner that during pendency of the Dispute, Society must recover charges from commercial shop owners on par with the residential flat owners. It appears that the Society is already recovering said charges from the Petitioner. So far as recovery of charges from other shop owners is concerned, the same can be decided at the time of final hearing of the Dispute.

8. In my view therefore, there is no point in keeping the Writ Petition pending, which is likely to delay decision of the main Dispute pending before the Co-operative Court. The arrangement made during pendency of the Writ Petition about allotment of one visitor car parking space to the Petitioner can be directed to be continued during pendency of Dispute before the Co-operative Court. The parties are *ad idem* that the visitor

car parking space which faces the ramp is a covered parking space.

9. So far as the Contempt Petition is concerned, since major grievance of the Petitioner relating to allotment of car parking space is met with. Dr. Warunjikar, after taking instructions from his client, who is personally present before the Court, fairly seeks leave to withdraw the Contempt Petition.

10. Accordingly I proceed to pass the following order:

i) The orders passed by the Co-operative Court on 7 January 2023 and by the Co-operative Appellate Court on 29 September 2023 shall stand modified by following arrangement, which shall continue to operate during pendency of Dispute No.CC/333/iii/74/2022:-

a) The Respondent-Society shall permit Petitioner to use one visitor car parking space which faces the ramp on the ground floor;

b) The Respondent-Society shall permit the Petitioner and his employees to use the common toilet;

c) The Petitioner shall continue paying maintenance charges in respect of Shop No.4 to the Respondent-Society.

ii) The Co-operative Court is requested to expedite hearing of Dispute No.CC/333/iii/74/2022 and shall make an endeavor to decide the same as expeditiously as possible preferably within a period of 18 months.

iii) It is clarified that none of the parties shall claim any equities on the basis of interim arrangement that is made during pendency of the Dispute. Similarly nothing observed either in the interim orders passed by the Co-operative Court and Co-operative Appellate Court as well as by this Court shall influence the Co-operative Court while deciding the Dispute finally.

11. With the above directions, Writ Petition and Contempt Petitions are **disposed of**. Rule is made partly absolute.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
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