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5-WP-16634-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16634 OF 2024

Manjiri Neelkanth Karandikar

...Petitioner

V/s.

Neelkanth Gopalrao Karandikar

...Respondent

*Mr. Girish Godbole, Senior Advocate with Ms. Aishwarya Shinde for
Petitioner.*

Mr. Rahul Mestry with Ms. Akshada Jagdale for Respondent No. 1.

Mr. Neelkanth G. Karandikar Respondent No. 1 present in the Court.

CORAM: SANDEEP V. MARNE, J.

DATED: 15 JUNE 2026.

P.C.:

1) The Petition challenges judgment and order dated 26 July 2024 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune allowing Appeal No. 7 of 2022 filed by Respondent No. 1 and setting aside the judgment and Award dated 21 August 2018 passed by the Co-operative Court No. 2, Pune in Dispute No. 37 of 2011. By its Award dated 21 August 2018, the Co-operative Court had restrained Respondent No. 1 from transferring by way of sale, gift, lease exchange or mortgaging flat No. 12 without the consent of the Petitioner-disputant. The Co-operative Court has also restrained the second Respondent-society from issuing no objection

certificate to Respondent No. 1 for transfer or sale of flat No. 12 without the consent of the Petitioner disputant.

2) I have heard Mr. Godbole, the learned Senior Advocate appearing for the Petitioner and Mr. Mestry, the learned counsel appearing for Respondent No. 1.

3) The Co-operative Appellate Court has set aside the judgment and Award dated 21 August 2018 passed by the Co-operative Court only on the ground of jurisdiction. The Co-operative Appellate Court has held that the dispute is essentially between the Petitioner and Respondent No. 1 about title of flat No. 12. However, the Appellate Court has ignored the position that Petitioner has now become joint member of the society in respect of flat No. 12 by virtue of order dated 30 December 2015 passed under Section 23 (2) of the Maharashtra Co-operative Society's Act 1960. (**MCS Act**) In that view the Petitioner falls in one of the enumerated categories (a) to (e) of Sub-section (1) of Section (91) of the MCS Act. Therefore Co-operative Court would have jurisdiction in a dispute touching the business of the society when such dispute is raised by one of the joint members. However, the Co-operative Court would obviously not have jurisdiction to decide issue of title between the Petitioner and Respondent No. 1.

4) Petitioner claims title in flat No. 12 on the strength of Agreement dated 30 March 1983. On the other hand, Respondent No. 1 claims exclusive title in respect of flat No. 12. The dispute between Petitioner and Respondent No. 1 *qua* title of flat No. 12 cannot be

decided by Co-operative Court under Section 91 of the MCS Act. To this extent operative direction in paragraph 2 of the Co-operative Court's order dated 21 August 2018 restraining Respondent No. 1 from transferring the suit flat is clearly without jurisdiction.

5) However, there is no dispute to the position that order dated 30 December 2015 passed under Section 23 (2) of the MCS Act by the Joint Registrar has attained finality. The Petitioner is now the joint member in respect of flat No. 12. Respondent No. 2 is a Co-operative Housing Society. One of the businesses of the Co-operative housing Society is to manage the units in its building. The Co-operative Society cannot act on the basis of requisition made by one of the joint members and issue the NOC applied for. It needs to ensure that a joint Application is made by both the members for NOC. To this extent the dispute between Petitioner (joint member) and the society would be the one contemplated under Section 91 (1) of the MCS Act. I am therefore of the view that operative direction in paragraph No. 3 of the Co-operative Court's order dated 21 August 2018 can be sustained.

6) The Co-operative Appellate Court has thus erred in completely setting aside the judgment and order of the Co-operative Court dated 21 August 2018. As observed above operative direction No. 2 of the Co-operative Court's order needs to be set aside while sustaining operative direction in paragraph No. 3.

7) Accordingly, the Petition partly succeeds and I proceed to pass the following order:

(i) Judgment and order dated 26 July 2024 passed by the Co-operative Appellate Court is set aside and modified as under:

(a) Operative direction in paragraph No. 2 of the judgment and order dated 21 August 2018 passed by Co-operative Court is set aside.

(b) However, operative direction in paragraph no. 3 of the order dated 21 August 2018 passed by the Co-operative Court is sustained.

(ii) Petitioner would be at liberty to adopt appropriate proceedings for securing declaration *qua* title in respect of flat No. 12 from appropriate Court.

8) Writ Petition is partly allowed in above terms. There shall be no order as to cost.

[SANDEEP V. MARNE, J.]