

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Mrs. U. S. Babar, Judge)

Dispute No. CCT 01/2018

Shri. Sharad Joshi and others

Disputants

V/S

Shri. Nagesh Pandey and others

Opponents

Order
(Below application Exh. 15)

1. Disputants have filed present application for restraining the opponent no.1 acting as a chairman of the opponent no.2 society till further orders.

Brief facts of the application are as under : -

2. It is the contention of the disputant that they have filed present dispute for declaration and injunction. Society had called 23rd Annual General Body Meeting on 25/09/2016 in which opponent no.1 was present. He had tendered his resignation and accordingly society has passed resolution no. 9 and decided that the resignation of opponent no.1 as a chairman and managing committee member are hereby accepted and approved. Opponent no.1 is representing himself as a chairman of the society and illegally calling the meeting. Opponent no.1 has no authority to represent him as a chairman of the society and is acting against the interest of the society. The hearing of Exh. 5 will take time. Therefore opponent no.1 will be restrained from acting as a chairman of the society.

3. Opponent no.1 has²filed his say and contended that the disputant is suppressing material facts from the Court. All the documents are important to bring on record. Court can pass any suitable order. Hence the application be rejected.

4. Considering the rival contentions the following issues are raised for my consideration and I have given findings on each of them with reasons as under :-

Sr. No.	Issues	Findings
1	Whether there is prima facie case in favour of disputant?	In the affirmative
2	In whose favour balance of convenience lies ?	Disputant
3	If application is not allowed to whom irreparable loss would be caused ?	Disputant
4	What order ?	As per final order

REASONS

5. I have perused application, say filed by opponent no.1. Heard Ld. Adv. Shri. K. D. Sukre for the disputant, Ld. Adv. Smt. Madhura Sakhare for the opponent no.1 and Ld. Adv. Shri. C. K. Deshmukh for the opponent no.3.

AS TO ISSUE NO. 1 TO 3

6. Ld. Adv. Shri. K. D. Sukre for the disputant submitted that the disputants have filed present dispute for declaration and injunction. The opponent no.1 who is representing himself as a chairman of the society had tendered his resignation in the 23rd Annual General Body Meeting held on 25/09/2016. Accordingly society has passed resolution no. 9 and decided that the resignation of opponent no.1 as a chairman and managing committee member

are hereby accepted and approved. But still he is representing himself as a chairman of the society and illegally calling the meetings. He is acting against the interest of the society, therefore he be restrained from acting as a chairman of the society. Ld. Adv. Shri. C. K. Deshmukh reiterated the same contentions.

7. Ld. Adv. Smt. Madhura Sakhare for the opponent no.1 submitted that opponent society has not followed proper procedure for accepting the resignation of opponent no.1. Resolution no. 9 of the 23rd Annual General Body Meeting dated 25/09/2016 has been passed without quorum. The strength of managing committee at the time of conducting meeting as per the model byelaws is six. Mr. G. S. Gaonkar and the opponent no.3 has conducted illegal managing committee meeting without quorum. Deputy Registrar on 07/03/2017 issued letter and informed society that the complaint filed by opponent no. 2 in respect of resignation of opponent no.1 is dismissed and the opponent no.1 is still holding chairman of the society. As per the resolution no. 2 passed in the managing committee meeting dated 13/12/2016 wherein it is resolved that the managing committee will follow the byelaw no. 132(page no. 71) and Mr. N. J. Pandey will continue as chairman of opponent society. Therefore the application filed by the disputant for restraining the opponent no.1 as a chairman of the society is liable to be rejected.

8. So far as the prima facie case, balance of convenience and irreparable loss is concerned, it is well settled principle of law that, while adjudicating the interim application or stay application one has to examine these three main ingredients of law of injunction. Prima facie case means the existence of circumstances justifying the trial of the question of facts and law raised in the litigation. The disputant is required to prima facie establish that, in the event of non interference

by the Court, their will be⁴ irreparable injury and substantial loss caused. Existence of prima facie case alone does not entitle a disputant to an order of temporary injunction. Both prima facie case and balance of convenience are necessary. It is not enough for the disputant to show that, the disputant has a prima facie case, he must further show (1) he will suffer an irreparable loss injury if the relief is refused. (2) In the event of success in suit he will not have a proper remedy is being awarded adequate damages. (3) The balance of convenience is in his favour. (4) He must show a clear necessity for affording immediate protection to his alleged right of interest which should otherwise be seriously injured.

9. Disputants have filed present dispute for declaration that all the acts done by the opponent no.1 in his official capacity after passing of resolution no. 9 in the 23rd Annual General Body Meeting of the society dated 25/09/2016 are illegal and against the provisions of law and the agenda notice dated 02/12/2017 for calling managing committee meeting dated 09/12/2017 and the meeting itself and business transacted therein and the passing of no confidence motion against opponent no. 3 is illegal and ultravires and for other reliefs. It is a fact that the opponents have appeared in this matter through advocate, yet they have not filed their written statement and say to the dispute and interim application. Disputant has filed present application stating that the opponent no.1 be restrained from acting as a chairman of the society till further orders on Exh. 5 because it will take time to decide as the opponent no.1 is acting against the interest of the society. Admittedly opponent society

had called 23rd Annual General Body Meeting on 25/09/2016 and the opponent no.1 has submitted his resignation in that Annual General Body Meeting. On perusal of resignation letter dated 25/09/2016 it reveals that opponent no.1 has given resignation from the post of chairman and committee member to the managing committee on 25/09/2016 due to some personal reasons. Upon perusing minutes of meeting held on 25/09/2016 it is clear that as per the agenda no. 9 it was resolved that the resignation of Mr. Nagesh Pandey as a chairman and managing committee member are accepted and approved. The said resolution is proposed by Mr. B. V. Waghmare and seconded by Mr. G. G. Girkar and it was passed unanimously. Thereafter in the 24th Annual General Body Meeting held on 24/09/2017 vide resolution no. 1 resolved that the minutes of 23rd Annual General Body Meeting dated 25/09/2016 prepared and signed by secretary and treasurer are hereby passed and approved. It is the contention of opponent no.1 that the said resolution no. 9 has been passed without quorum and in the managing committee meeting dated 13/12/2016 vide resolution no. 2 it was resolved that the managing committee will follow the byelaw no. 132 and Mr. N. J. Pandey will continue as a chairman of the society. Therefore application filed by the disputant deserves to be rejected.

10. It is an admitted fact that the opponent no.1 has not challenged the resolution no. 9 passed in 23rd Annual General Body Meeting dated 25/09/2016 regarding approval and acceptance of his resignation before the General Body. During the hearing of the present application, Ld. Advocate for opponent no.1 is contending that the resolution no. 9 passed in the 23rd Annual General Body Meeting held on 25/09/2016 has been passed without quorum. As

the opponent no.1 has not⁶challenged the minutes of 23rd Annual General Body Meeting before this Court till today therefore it attained the finality. If the opponent no.1 has any grievances in respect of conduct of 23rd Annual General Body Meeting held on 25/09/2016 then he has remedy to challenge the same and he can take his pleas in that proceeding. At present it is a fact on record that the opponent no.1 has given resignation and it has been accepted and approved in the 23rd Annual General Body Meeting held on 25/09/2016 vide resolution no. 9 and thereafter the minutes of meeting of the said meeting has been approved and passed in the 24th Annual General Body Meeting held on 24/09/2017. As the Annual General Body Meeting is a supreme as having power to pass resolutions as per the provisions of law and the opponent no.1 has not challenged these resolutions till today therefore contentions raised by Ld. Advocate for opponent no.1 in respect of conduct of 23rd Annual General Body Meeting while passing the resolution no. 9 are not sustainable. As the resignation given by the opponent no.1 has been accepted and approved in the Annual General Body Meeting therefore in such circumstances if again he be allowed to represent himself as a chairman of the society and to conduct the business of the society then the society and its members will suffer an irreparable loss. On the contrary if the opponent no.1 is restrained till further orders on Exh. 5 no harm or prejudice will be caused to him. Therefore with the above said discussion, disputant has proved prima facie case and balance of convenience in their favour. Hence I have answered issue no. 1 in the affirmative and for issue no. 2 and 3 I have given finding

in favour of disputants and for issue no. 4 I pass the following order.

Order

1. Application at Exh. 15 is allowed.
2. Opponent no.1 is hereby temporarily restrained from acting as a chairman of the society till further orders.

(Dictated and pronounced in open Court.)

Place : Thane
Date : 11 / 01 / 2018

(Mrs. U. S. Babar)
Judge
Co-operative Court, Thane