

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Mrs. M. A. Sali, Judge)

Dispute No. CCT 01/2018
CNR No. MHCO04-000001-2018

Shri. Sharad Joshi and others

Disputants

V/S

Shri. Nagesh Pandey and others

Opponents

Order
(Below application Exh. 5)

1. It is the case of the disputant that they are the members of the opponent no. 2 society. Opponent no. 1 is a member of opponent no. 2 society. Opponent no. 2 is a society registered under the provisions of MCS Act 1960. By filing the present dispute and the interim relief application the disputant is praying that the opponent no. 1 be restrained by way of permanent injunction from acting as chairman of the opponent no. 2 society and performing the function of chairman and be restrained from utilizing the seal, stamp, letter heads and other stationeries and using the official e-mail id in its official capacity and direction be given to opponent no. 1 to hand over the keys of the office stamped, sealed, minute book, letter head and other stationary, documents, registers of the opponent no. 2 which is in his possession to the opponent no. 2 and restrain acting against the interest of the society till the disposal of the dispute.

2. The opponents in their reply to Exh. 5 at Exh. 22 submits that the intentions of the disputants in filing the present dispute are malafide and vexatious. The disputant no. 1 has been using the secretary Mr. G. S. Gaonkar as tool to harass the managing

committee including the opponent no.1. The secretary Mr. G. S. Gaonkar is in hand in glove with the disputants have created anarchy in the society. The said secretary and the disputants are spreading defamatory statements in the society against the managing committee members including the opponent no.1 that, the managing committee members are not performing their duties. However it is factual position that the secretary Mr. G. S. Gaonkar neither perform any duty towards the society and nor allow the managing committee including the chairman to perform any duty. The members of the society as are not aware with the facts of the tactics played by the secretary, harass the managing committee members in respect of the lack of services in the society.

3. The opponent no.1 states that the disputant have suppressed several material facts from the Hon'ble Court with deliberate and malafide intentions. The entire dispute has been filed by the disputants only to take revenge as the managing committee followed legal procedure and as per society adopted new model byelaws in the year 2014 against the opponent no.3 and passed no confidence motion.

4. The opponent no.1 states that the disputants who are not committee members but have deliberately filed present dispute to harass the opponent no.1. The remaining 6 committee members are very essential to present dispute and in their absence no justice will be done in the matter.

5. The opponent no.1 states that the disputants filed present dispute by adding opponent no.3 as opponent as he is wrong and unnecessary party. The opponent no.3 has been already removed from post of treasurer by following due process of law by Deputy Registrar Thane Special managing committee on 03/01/2018 at

Deputy Registrar Thane office premises and no confidence motion was passed against him. The opponent no.1 state that the disputants have filed present dispute challenging the authority of the opponent no.1 as chairman after marinate delay and they have not mentioned any reason for the said delay.

6. The opponent no.1 states that he has never submitted any resignation to the opponent no.2 society. The opponent no.1 states that the secretary and treasurer have harassed and tortured the opponent no.1 to such an extent that the opponent no.1 to such an extent that the opponent no.1 was left with no choice but to resign from his post. However he never submitted his resignation to secretary but he addressed his resignation to managing committee at 23rd AGM on 25/09/2016.

7. The opponent no.1 states that as per the clause no. 132 of byelaws which has been accepted by the society, therefore it is very clear that the alleged resignation given by the opponent no.1 was against the law hence, not maintainable. As per new model byelaws of the opponent society resignation of chairman to be addressed to secretary and thereafter, secretary to discuss the same matter with managing committee for further DDR procedure.

8. The opponent no. 1 states that the disputants have submitted final minutes of 23rd AGM held on 25/09/2016. However it is clear that the said final minutes were not produced as per provision of law, bad in law, devoid of any merits. The said illegal final minutes have been typed and circulated on bogus fabricated letter head of the society. Further it is important to note that the said final minutes signed by only secretary and treasurer. The secretary and treasurer failed and neglected to obtain the signature of the

opponent no.1 on the alleged final minutes. Most important fact that the signature of the treasurer on this forged final minutes is suspicious.

9. The opponent no.1 states that the resolution no. 9 mentioned in alleged in final minutes of 23rd AGM was passed without following due process of law. The opponent no. 1 states that he never submitted his resignation letter to the secretary during 23rd AGM.

10. It is important to note that the resignation of the chairman will be effective only after its acceptance and handing over the charge to the newly elected chairman, in the present case the secretary deliberately never followed due process of law and hence the resignation process of the chairman never completed. The Hon'ble Deputy Registrar directed the managing committee vide 3719/dated 17/11/2016 C.S. Thane city to prepare minutes of 23rd AGM. Accordingly the managing committee 8 out of 9 members filed genuine final minutes of 23rd AGM prepared on 18/02/2017 on the said minutes show that, the entire contention of resignation of opponent no.1 is false and fabricated.

11. The opponent no.1 stated that secretary filed application in respect of the alleged resignation of the opponent no.1, however the said application was duly rejected by the Hon'ble Deputy Registrar of Thane City vide order dated 07/03/2017 after proper verification of documents and hearing process. The opponent no.1 stated that the secretary Mr. G. S. Gaonkar therefore approached Hon'ble Divisional Joint Registrar Co-operative Societies Konkan Division Navi Mumbai and preferred revision application no. 87/2017

against the said order. In the light of above circumstances the opponents hereby pray this Hon'ble Court to reject the application for interim stay and any other order may be passed in favour of the opponents.

12. After hearing both the parties and perusing the documents on record following issues arise for my consideration.

Sr. No.	Issues	Findings
1	Whether there is prima facie case in favour of disputant?	In partly affirmative
2	In whose favour balance of convenience lies ?	As per final order
3	If application is allowed to whom irreparable loss would be caused ?	As per final order
4	What order ?	As per final order

REASONS

AS TO ISSUE NO. 1 TO 3

13. It is a case of the disputants that they are the members of the opponent no. 2 society. Opponent no. 2 society is a Co-operative Housing Society registered under the MCS Act 1960. Opponent no. 1 is the chairman of the society and opponent no. 3 is the treasurer of the society. By filing the present dispute along with the present interim relief application the disputant is praying that pending the hearing and final disposal of the dispute the opponent no. 1 be restrained to continue and act as a chairman of the society and also to hand over the keys, seal, stamp of the society to the present managing committee and also restrained to use the letter head and e-

mail of the opponent no. 2 society. As opponent no. 1 resigned from his chairmanship on 25/09/2016 and his resignation is accepted in a Annual General Meeting dated 25/09/2016 by passing resolution no. 9.

14. The opponent strongly objecting for acceptance of his resignation from the post of chairman in AGM held on 25/09/2016 and submitted that his resignation is not accepted as per the adopted byelaws of the opponent no. 2 society and he constrained to give his resignation because the treasurer and secretary harassed him to such extent that he constrained to give his resignation in AGM dated 25/09/2016. It is submitted by the opponent no. 1 that as per the byelaw no. 132 of the society the resignation is required to be addressed to the secretary and the secretary has to put his resignation for a discussion in managing committee meeting of the society. In the present case though he resigned from the post of chairman in the annual general meeting dated 25/09/2016 the said resignation is not addressed by him to the secretary but to the managing committee and in the very same meeting the said resignation is kept for acceptance before the general body which is against the procedure prescribed in byelaw no. 132 and hence he submitted that he is the chairman of the society as on today and the Deputy Registrar by order dated 07/03/2017 given finding that in the managing committee meeting dated 13/12/2016 the managing committee refused to accept his resignation and passed resolution that opponent no. 1 be continue as chairman of the society. Now the question arise whether the resignation which is accepted in the general body meeting dated 25/09/2016 is valid or whether the

resolution passed in the managing committee meeting dated 13/12/2016 for not accepting the resignation of opponent no.1 is valid.

15. It is also the submission by the opponent that the minutes of the AGM meeting dated 25/09/2016 is filed without the authority of the secretary of the society and they are not on the letter head and they are not valid minutes. The opponent also filed the minutes of meeting dated 25/09/2016 which is signed by the opponent no. 1. After comparing these minutes I find that the minutes produced by the disputant includes the resolution no. 9 accepting the resignation of the opponent no. 1 and it is signed by the treasurer and secretary of the society. The minutes which is filed on record by the opponent no. 1 does not mention about the resolution no. 9 and these minutes are signed by opponent no. 1 only. After perusing the minutes filed by the disputant in the letter head it is specifically mentioned that Mr. Pandey have not handed over the letter head and keys of the office and important documents. This AGM draft is printed on regular paper and not on Anu Nagar Co-operative Housing Society letter head. Such final draft of minutes is submitted by the disputant on 18/12/2016 and the final minutes submitted by the opponent no. 1 is of 18/02/2017. So it is necessary to adjudicate on this point whose minutes are legal and valid and whether as per the byelaw no. 132 the resignation is required to be submitted to the secretary and only the managing committee have a power to accept the resignation and not the general body. Because the opponent has challenged the acceptance of resignation by the general body and reiterated the resolutions passed in the managing committee dated 13/12/2016 as legal and valid rejecting his

resignation and allowed him to continue as chairman of the society. But I find that the fact that the opponent no. 1 voluntarily resigns from the chairmanship is nowhere denied by the opponent no. 1. It is submitted by the opponent that he is harassed in such a manner that he constrained to give his resignation in the AGM meeting dated 25/09/2016 itself. But he not filed a single document on record which shows that the secretary and treasurer harassed him in the AGM meeting. After comparing the minutes filed by the disputant and the opponent I find that the minutes filed by the disputant are signed by the treasurer and secretary and the minutes filed by the opponent no. 1 bears only his alone signature. Hence I prima facie find that the minutes filed by the disputant of AGM meeting dated 25/09/2016 are legal and valid. I also find that the annual general body is the supreme body. In this meeting all the members of the society have a right to participate in the affairs of the society and to take a majority decision. These annual general body is superior than the managing committee. The managing committee is established or formed amongst the members of general body to look after the day to day functions of the society. The power and function of the managing committee flows from the general body. The general body to elect and authorize the managing committee members to work on their behalf as a representative. Hence though there is a byelaw no. 132 which give the power to accept the resignation only by managing committee is contradictory. Hence I prima facie find that the resignation accepted by the general body in the general body meeting dated 25/09/2016 is legal and valid. Hence I find that the disputant prove the prima facie case, the balance of convenience also lies in favour of

the disputant and no prejudice would be caused to the opponent if their injunction as prayed is granted. Hence I answer to point no. 1 to 3 in the affirmative and proceed to pass the following order.

Order

1. Application at Exh. 5 is partly allowed.
2. Opponent no. 1 is hereby restrained from acting as a chairman of the opponent no. 2 society and carrying and performing the function of the chairman of the opponent no. 2 society and to use the e-mail of the society in official capacity till final disposal of the dispute.
3. The opponent no. 1 is hereby directed to handover the keys of the office of opponent no. 2, stamp/seal, minute book, letter head and other stationary and/or document register of the opponent no. 2 which is in his possession to the opponent no. 2 through its secretary within one month from the date of this order.

Place : Thane
Date : 03 / 08 / 2018

(Mrs. M. A. Sali)
Judge
Co-operative Court, Thane