

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 6 OF 2015**

Shri. Jayant Radhakrishna Lawande ...Appellant.

Versus

The Goa State Co-operative Bank Ltd.,
and others ...Respondents.

AND

APPEAL FROM ORDER NO. 7 OF 2015

Shri. Tulshidas Surya Satarkar ...Appellant.

Versus

1] The Goa State Co-operative Bank Ltd.,
and others ...Respondents.

Mr. Gaurish Agni, Advocate with Mr. Fahad Shaikh, Advocate for
the appellant.

Mr. S. R. Rivankar, Advocate for respondent Nos.1 and 2.

Mr. Pravin Faldessai, Additional Government Advocate for the
respondent Nos.3 and 6.

Coram :- M. S. SANKLECHA, J

Date : - 7th April, 2015.

Order :

Mr. Agni, learned counsel for the appellant states that respondents
No.4 and 5 have been served and he undertakes to file affidavit of
service.

2. At the request of the counsel for the parties both the appeals are
being disposed of at the stage of admission.

3. These appeals challenge two orders dated 27 October, 2014,
rejecting the application filed by the two appellants in their respective

suits, seeking a temporary injunction restraining the respondent No.1 (The Goa State Co-operative Bank Ltd) and respondent No.2 (Recovery and Sales Officer, The Goa State Co-operative Bank Ltd.), from taking any further proceedings consequent to two eviction notices dated 14 May, 2010.

4. As the issues arising in both the appeals are identical and facts are similar, I would for convenience refer to the facts in Appeal from Order No.6/2015 for consideration of the issues in these appeals.

5. By an agreement dated 9 March, 2007, the appellant purchased a flat on the ground floor of the building namely Pratibha Complex-B (hereinafter referred to as 'suit flat'), from respondent No.5 (M/s. Sagar Builders & Real Estate). Thereafter, on 31 December, 2007 the respondent No.5 mortgaged the entire building including the suit flat to respondent No.1 for availing of a loan. This without the knowledge of the appellant.

6. The respondent No.5 failed to honour its commitment to respondent No.1 in respect of the loan taken. This resulted in arbitration proceedings leading to orders directing the recovery of the loan amount from the respondent No.5 and entitling respondent No.1 Bank to exercise its rights over the mortgaged property.

7. On 14 May, 2010, the petitioner for the first time learnt about the above development, as a notice was pasted outside the door of this flat,

by the respondent No.2 directing the petitioner to vacate the premises on account of non-payment of loan obtained by respondent No.5. Immediately, thereafter the appellant filed a suit in the Civil Court bearing No.62/2010 seeking an injunction restraining the respondent from taking any further action consequent to notice dated 14 May, 2010. However, as the appellant had not given a statutory notice to respondent No.1 as required under Section 115 of the Multi State Co-operative Societies Act, 2002 (hereinafter referred to as 'the Act'), the plaint filed by the appellant was rejected.

8. Thereafter the appellant on 25 February, 2012 served a notice under Section 115 of the Act, on the Central Registrar of Co-operative Societies at New Delhi. Thereafter, the appellant filed the present suit bearing Suit No.67/2012 before the District Court on 6 December, 2012. The appellant also sought the temporary injunction seeking to restrain the respondent No.1 Bank from taking any further steps to evict the appellant from the suit premises.

9. The impugned order dated 27 October, 2014 rejects the petitioner's application for temporary injunction on the following grounds :

- (a) No notice as required under Section 115 of the Act has been given to the Central Registrar, Co-operative Societies, New Delhi ; and

(b) That the suit as filed is barred by Res Judicata. This on the ground that the earlier suit bearing No.62/2010 was rejected under Order VII Rule 11 of the Civil Procedure Code.

10. My attention was invited to Para No. 31 of the plaint, wherein the appellant has specifically averred that notice under Section 115 of the Act to the Central Registrar of Co-operative Societies was given on 24 February, 2012 and that the 90 days period as provided therein expired on 22 May, 2012. The present suit was filed in December 2012. Further the impugned order completely misapplied the law to hold that the present proceedings are barred by the Res Judicata in view of the dismissal of the Suit No.62/2010, when the same was not on merits. In view of the above the impugned order is not sustainable. Accordingly, the same is quashed and set aside.

11. The appellant's application for interim injunction would be considered afresh by the learned trial Judge and decided on the basis of material found on record and the merits of respective contentions. All contentions left open. It is made clear that the trial Judge would independently decide the injunction application afresh without in any manner influenced by its earlier order or observations by this Court. With the above observations, both the appeals stand disposed. No order as to costs.

M. S. SANKLECHA, J.