

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.798 OF 2014

Shri Mahalaxmi Developers through Sole  
Proprietor Prabhavati Mahantappa Kalshetty through  
Constituted PoA Mahantappa Mallikarjun Kalshetty ... Applicant  
Vs.  
Nanda Chandrakant Ghodake and others ... Respondents

Mr. I. M. Khairdi for Applicant.  
Mr. Surel S. Shah for Respondents.

**CORAM : R. G. KETKAR, J.**  
**DATE : 7<sup>TH</sup> JULY, 2015**

**P.C. :**

Heard Mr. Khairdi, learned Counsel for applicant and Mr. Shah, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.1 has challenged the judgment and order dated 16.05.2014 passed by the learned Joint Civil Judge, Junior Division, Solapur below exhibits 133 and 144 in Regular Civil Suit No.428 of 2013. By that order, the learned trial Judge overruled the preliminary objection raised by the defendant No.1 and held that Civil Court has jurisdiction to entertain and try the Suit.

3. In support of this Application, Mr. Khairdi submitted that defendant No.1 raised objection on the ground of maintainability of the Suit in the Civil Court. He submitted that defendant No.2 is a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). He submitted that without issuing notice under Section 164 of the Act, plaintiff has instituted the Suit. He submitted that having regard to the Bye-laws of defendant No.2 society, and in particular Bye-law No.2, the business of

the society is to construct store-houses for the benefit of the members. Plaintiff has filed Suit praying for declaration that the Power of Attorney and the Development Agreement executed by and between defendant No.2 and defendant No.1 is subsisting and binding of defendants No.1 and 2. The subject matter of the Suit touches the business of the society, and therefore, in the absence of notice under Section 164 of the Act, Suit is liable to be dismissed.

4. On the other hand, Mr. Shah supported the impugned order. He submitted that Bye-law of the society lays down the aims and objects of the defendant No.2 society. The object of the society is to encourage the production of oil through the oil mills and provide the raw material as well as instruments to facilitate the production of oil through the oil mills. In other words, the business of the society is not about development of the property. He, therefore, submitted that no case is made out for invocation of powers under Section 117 C.P.C.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order shows that the learned trial Judge has observed in paragraph 6 that after going through the pleadings of both the parties, dispute is not touching the business of the society within the purview of Section 91 of the Act. In fact, earlier, the Co-operative Court had returned the dispute for presenting it before the competent Court. After perusing the impugned order as also the order passed by the Co-operative Court dated 15.02.2013, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, no case is made out for invocation of powers under Section 115 C.P.C. Application fails and the same is rejected.

**(R. G. KETKAR, J.)**