

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 262 OF 2015
WITH
CIVIL APPLICATION NO.326 OF 2015
IN
APPEAL FROM ORDER NO. 262 OF 2015

Dadar Pratima Co-operative Housing
Society Ltd. & Anr.

..... Appellants.

VERSUS

M/s.Pratima Builders & Ors.

..... Respondents.

Mr.Vishal Kanade a/w Mr.S.J.Chaurasia i/b M/s Ashoka Law Firm for the Appellants.
Mr.S.R. Page for Respondent Nos.1 & 12.
Ms.Gaurai Deshpande i/b Ms.Neha Bhide for Respondent Nos.13 & 14.
Mr.A.V.Diwate for Respondent Nos.15 to 17-BMC.
Mr.Harshad Bhadbhade for Respondent Nos.18 & 19.

CORAM : R.D. DHANUKA, J.

DATED : 01st DECEMBER, 2015.

P.C.

. The learned Counsel for the Appellants states that the Respondents are served. By consent of both the parties, the Appeal from Order is heard finally at the admission stage.

2. In this Appeal from Order, the Appellants have impugned an order dated 12th January, 2015 passed by the learned trial Judge thereby returning the Plea of the Plaintiffs under Order 7, Rule 10 of the Civil Procedure Code, 1908 for presentation to the proper Court.

3. The learned Counsel appearing for the Appellants invited my attention to the reasons recorded by the learned trial Judge and also to the averments made in the Plaint and the prayers and submits that none of the reliefs claimed in the Plaint would fall under the provisions of Sub-section 3 of Section 91 of the Maharashtra Co-operative Societies Act, 1960 and the dispute does not fall under the purview of the said provision and thus, only Civil Court has the jurisdiction to try and entertain the suit.

4. Mr. Page, learned Counsel appearing for the respondent No.1 submits that the suit filed by the Appellants was even otherwise required to be returned under Order 7, Rule 10 of the Civil Procedure Code, 1908 on the ground that the City Civil Court has no pecuniary jurisdiction to try and entertain the suit filed by the Appellants. The learned Counsel could not defend the order passed by the learned trial Judge. He is not in position to point out as to how the reliefs prayed in plaint were governed by the provisions of Sub-section 3 of Section 91 of the Maharashtra Co-operative Societies Act, 1960.

5. A perusal of the plaint clearly indicates that the suit was filed for enforcement of the statutory rights under the provisions of the Maharashtra Ownership of Flat Act, 1976. It is averred by the Appellants that the suit is not

susceptible to the monetary valuation and had valued at Rs.1,000/-. A perusal of the averments in the plaint and also all the prayers clearly indicates that none of the prayers would fall under the provisions of Section 91 of the Maharashtra Co-operative Societies Act, 1960. The plaint further indicates that the suit is filed for enforcement of the statutory rights of the Appellant-Society under the provisions of the Maharashtra Ownership of Flat Act, 1976.

6. In my view, the Order passed by the learned trial Judge thereby returning the plaint under Order 7, Rule 10 of the Civil Procedure Code, 1908 is totally erroneous and contrary to the provisions of Maharashtra Co-operative Societies Act, 1960. The impugned Order is accordingly set-aside. The Appeal from Order is allowed.

7. In so far as, the submissions of the learned Counsel for the Respondent No.1 that the plaint was even otherwise required to be returned on the ground that the City Civil Court does not have pecuniary jurisdiction to entertain the said suit is concerned, it is for the Respondent No.1 to raise such plea before the learned trial Judge. If any such plea is raised by the Respondent No.1, the learned trial Judge shall decide such plea on its own merits and in accordance of law. The trial Court is directed to proceed with the matter, at the stage, it was on the date of the order.

8. In view of the disposal of the Appeal from Order, the Civil Application does not survive and it is accordingly disposed of. No order as to costs.

[R.D. DHANUKA, J.]