

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.331 OF 2014**

Eternity Co-operative Housing Society **..Applicant**
Vs.
Eternity Friends Co-operative Housing Society & Anr ..Respondents

Mr. K. S. Dewal i/b Mr. J. M. Joshi for the Applicant
Mr. Sureshkumar Shetty for the Respondent No.1
Mr. Jayesh Mestry i/b M/s. RMG Law Associates for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 10th MARCH, 2015

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 1-2-2014 passed by the Learned Civil Judge Junior Division, Thane, by which order the application Exhibit 19 invoking Section 9A and Order VII Rule 11(d) of the Civil Procedure Code, came to be rejected.

2 The Respondent No.1 herein is the original Plaintiff who has filed the Suit in question being Regular Civil Suit No.36 of 2013 against the Petitioner society and the developer. The Suit in question has been filed principally for the relief of seeking a declaration that the 9 meter wide road shown in the sanctioned plan and annexed to the plaint at Annexure A is a common passage / road / area meant only for the entry and exit of the members and tenants of the Plaintiff and the Defendants. The other declaration sought is that the Defendant No.1 its members, tenants, agents, employees are

not entitled to park vehicle on either side of the 9 meter common road / passage shown in the sanctioned plan and annexed to the plaint at Annexure A. Hence the dispute appears to be in respect of the common road / passage which the Plaintiff society is claiming to be a common amenity available. The Defendant No.1 i.e. the Petitioner herein by filing application Exhibit 19 raised a preliminary issue as regards the maintainability of the Suit on the touchstone of the notice under Section 164 of the Maharashtra Co-operative Societies Act, not being served on the Petitioner society. Pursuant to the said application, two issues came to be framed by the Trial Court which were to the following effect :

(1) Whether this court is having jurisdiction to try and entertain the suit

(2) Whether suit is maintainable without notice u/s 164 of Maharashtra Co-operative Societies Act, being served on defendant No.1.

3 The Trial Court considered the said two issues and has by the impugned order dated 1-2-2014 rejected the application Exhibit 19. The gist of the reasoning of the Trial Court was that considering the nature of the dispute which was in respect of common passage/ road / area, the same does not come within the purview of the dispute touching the business of the society as posited in Section 164 of the Maharashtra Co-operative Societies Act. The Trial Court observed that the dispute in the Suit in question pertains to the rights of the parties over the suit property which is a common passage and hence the requirement of Section 164 in the matter of issuing notice is not attracted. The

Trial Court whilst adjudicating upon the said two preliminary issues adverted to the Judgment of the Apex Court in the matter of **Deccan Merchants Co-operative Society Vs. Dalichand Jugraj Jain & Ors.**¹ wherein it seems that a similar view was taken by the Apex Court having regard to the nature of the dispute involved in the Suit in the said case.

4 In my view, the reasons on the basis of which the application Exhibit 19 has been rejected by the Trial Court can be said unexceptional in the light of the dispute which is involved in the Suit. The dispute is as regards the civil rights of the parties over a common passage / road/ area and therefore does not touch the business of the society. The impugned order passed by the Trial Court does not suffer from any error of jurisdiction. Hence the invocation of the Revisionary Jurisdiction of this Court is not warranted. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]

1 AIR 1969 SC 1320