

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 255 OF 2007

Ramtekdi Audyogik Sahakari Vasahat Maryadit
Through its Chairman
Dr.Shri Bhau Raghunath Sabde

.. Petitioner

Vs.

Dinesh Nivrutti Kitekar

.. Respondent

Mr.Vijay D.Patil, Advocate for the Petitioner.
Mr.V.A.Shastry, Advocate for Respondent.

CORAM : R.G.KETKAR, J.
DATED : 07th DECEMBER, 2015

P.C. :

. Heard Mr.Vijay D.Patil, learned Counsel for the petitioner and Mr.V.A.Shastry, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short 'C.P.C.') the applicant, hereinafter referred to as defendant, has challenged the judgment and order dated 03/04/2007 passed by the 8th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 352 of 2007. By that order, the learned trial Judge rejected the application made by the defendant under Order 7 Rule 11(d) of the C.P.C.

3. The respondent, hereinafter referred to as plaintiff, has

instituted Suit against the defendant for specific performance of contract. The plaintiff has prayed for direction to the defendant to execute a proper deed of conveyance in his favour and in case of default, a proper person may be appointed to execute the sale deed in his favour and for recovery of possession of the property in dispute. Alternatively, the plaintiff also claimed that in case, the Court comes to the conclusion that he is not entitled to get decree of specific performance, earnest money may be returned along with damages as specified in the particulars of claim along with future interest @ 15% p.a.

4. During the pendency of the Suit, plaintiff took out application for injunction under Order 39 Rules 1 & 2 read with Section 151 of C.P.C. restraining the defendant from creating third party interest in the suit property and parting with possession of the suit property with any third party till the disposal of the Suit.

5. The defendant took out application dated 16/03/2007 at Exhibit 14 under Order 7 Rule 11(d) of C.P.C. for rejection of the plaint as it is barred in view of Section 164 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). The plaintiff resisted the application by filing reply dated 22/03/2007. By the impugned order, the learned trial Judge rejected the application. It is against this order, the defendant has instituted above Civil Revision Application.

6. Mr.Patil strenuously contended that in view of Section 164 of the Act, as the plaintiff did not issue notice, the learned trial Judge ought to have rejected the plaint. He submitted that the learned trial Judge considered objects of the defendant and observed that the object of the Society is to acquire plots of land from the government, local bodies or private owner by purchase, lease, gift or otherwise and developing and improving the land in its possession and/or ownership and disposing of or leasing whole or portion of such land in plot to members for establishment of industrial units. As the plaintiff is not a member of the defendant and it is not the business of the defendant to sell its plots for developing to the third party purchaser, Section 164 of the Act is not applicable. He submitted that the learned trial Judge was considering Section 91 of the Act and not Section 164. The learned trial Judge, therefore, held that Suit of the plaintiff is maintainable for want of notice under Section 164 of the Act.

7. On the other hand, Mr.Shastry supported the impugned order. I have considered the rival submission made by the learned Counsel appearing for the parties. I have also perused the material on record. In particular, perusal of application at Exhibit 14 filed by the defendant shows that the said application is totally vague as regards nature of the business in which the defendant-Society is engaged. That apart, there is also no reference to the objects for

which the defendant-Society is established. In short, the defendant has not made reference to its by-laws as also to the nature of the business in which the defendant-Society is engaged. In view thereof, I do not find that any case is made out for interference with the impugned order albeit for different reasons as mainly, defendant did not give further and better particulars. Mr.Patil submitted that petitioner will file appropriate application giving all details. In view thereof, in my opinion, ends of justice will be served by permitting the defendant to file a fresh application giving all details as regards aims and objects of the Society as also nature of the business carrying on by defendant-Society. If such application is taken out, the learned trial Judge will decide the same on the basis of the material on record uninfluenced by the observations made in the impugned order and this order. All the contentions of the parties on merits are expressly kept open.

8. Mr.Patil states that within 4 weeks from today, defendant will take out a fresh application under Order 7 Rule 11(d) of C.P.C. Mr.Shastry states that by order dated 07/12/2007 passed by this Court in Civil Application No. 292 of 2007 issued injunction restraining the defendant from creating any third party interest during the pendency of the Civil Revision Application. The said order may be continued for a period of 4 weeks from today so as to enable the plaintiff to obtain appropriate orders on application

Exhibit 5 which is pending till date.

9. In view thereof, Civil Revision Application is disposed of in the following terms.

i) The impugned order is quashed and set aside reserving liberty to the defendant to take out application within 4 weeks from today. The respondent-plaintiff shall file reply within 2 weeks from the date of service of that application.

ii) The order dated 07/12/2007 passed by this Court in Civil Application No. 292 of 2007 in the above Civil Revision Application is continued for a period of 4 weeks from today so as to enable the plaintiff to obtain orders on pending application at Exhibit. 5.

iii) In the event defendant files application within 4 weeks from today as aforesaid, the learned trial Judge will proceed to decide that application as expeditiously as possible and in any case within 4 weeks from the date of filing of that application.

iv) In case the defendant does not file application as aforesaid, the learned trial Judge is requested to decide the application Exhibit 5 as expeditiously as possible, in any case, within 8 weeks from today.

10. All the contentions of the parties on merits are expressly kept open. It is further made clear that continuation of order dated 07/12/2007 in Civil Application No. 292 of 2007 is not expression

on merits either way and the learned trial Judge will independently consider the request of the plaintiff for grant of interim relief on application Exhibit 5.

11. Rule is discharged with no order as to costs.

(R.G.KETKAR, J.)