

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7302 OF 2014

Citizen Credit Co-op. Bank Ltd.	..	Petitioner
VS.		
St. Sebastian Homes Co-op. Housing Society Ltd. & Ors.	..	Respondents

Mr. Amol Kharat i/b. Pillai & Co. for Petitioner.
Mr. Raphau D'souza for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 08 JANUARY 2015

P.C. :-

1] Rule. With the consent and at the request of the learned counsels for the parties, this petition is being disposed of finally at the stage of admission.

2] This petition challenges the orders dated 22 March 2012 and 5 February 2014 made by the Co-operative Court and the Maharashtra State Co-operative Appellate Court at Mumbai, declining the petitioner leave to amend their written statement, by way of addition of paragraphs 2(a) and 2(b), which reads thus :

"2(a) Without prejudice to the aforesaid contention the Opponent no. 4 state that the Opponent Bank was registered as a Multi State Co-operative Bank under the Multi State Co-operative Societies Act in January 1998 and as such the entire constitution of the Bank came to be

governed by the provisions of the Multi State Co-operative Societies Act, 1984. It is further contended that the Disputants failed to give Notice under Section 101 of the Multi State Co-operative Societies Act, 1984 (read with section 115 of the Multi State Co-operative Societies Act, 2002) to the Central Registrar before filing the suit in this Hon'ble Court. The issuance of such Notice is a Statutory obligation and therefore the suit against this Opponent is barred by law.

2(b) Without prejudice to the above this Opponent states that even otherwise the Disputant had failed to serve a Notice under Section 164 of the Maharashtra State Co-operative Societies Act, 1960, upon the Registrar of their intention to file the present Dispute or proceedings against this Opponent. The Dispute filed by the Disputant against this Opponent is barred by law and not maintainable as the above mandatory notice the Appropriate Authority has not been served.”

3] Both the Co-operative Court and the Tribunal have noted that the dispute in this case relates to the year 1998. The petitioner, on two occasions applied for and was granted leave to amend its written statement. The matter was at the stage of the petitioner's evidence, when the application for seeking leave to amendment came to be filed. On all these grounds, the Co-operative Court and the Co-operative Appellate Court opined that this was not a fit case where leave could be granted to amend the written statement.

4] The learned counsel for the respondent – society has reiterated the grounds which found favour with the Co-operative Court and the Co-operative Appellate Court. The learned counsel has submitted that the entire objective of seeking amendment is to delay the proceedings which have been pending since the year 1998. In such circumstances, the learned counsel submitted that this petition ought not to be entertained.

5] Although there is substance in the submissions made by and on behalf of the learned counsel for the respondents, looking to the nature of the amendment which is applied for, the same could have been granted by imposing costs upon the petitioner. The petitioner has now volunteered to pay costs in an amount of Rs.1,00,000/- (Rupees One Lakh only) to respondent no. 1 society as a condition precedent should leave be granted to amend its written statement. Besides the apprehensions expressed by the learned counsel for respondent no.1 with regard to the petitioner delaying the proceedings, can always be allayed by issuing suitable directions to the Co-operative Court to decide the dispute within a time bound manner. Accordingly, looking to the nature of the amendments which have been applied for, the petitioner is granted leave to amend its written statement. Such amendment shall be carried out within a period of three weeks from the date of this order. As a condition precedent to the carrying out of this

amendment, the petitioner shall pay to respondent no. 1 costs which have been quantified at Rs.1,00,000/- (Rupees One Lakh only). Further, the Co-operative Court before whom the dispute is pending shall endeavour to dispose of the same as expeditiously as possible and in any case within a period of six months from the date of this order. Needless to add that consequent to the petitioner carrying out amendment to the written statement, should respondent no. 1 desire to tender any further documents or examine any further witnesses then the Co-operative Court shall afford such opportunity to respondent no. 1. The defence that the delay in raising objection as to alleged non issuance of notice under Section 154 constitutes waiver, is also specifically kept open.

6] The petitioner shall co-operate in the matter of expeditious disposal of the dispute before the Co-operative Court and shall not without any reasonable cause seek adjournments in the matter.

7] Rule is made absolute to the aforesaid extent. The impugned orders dated 22 March 2012 and 5 February 2014 are set aside and leave to amend is granted upon terms as aforesaid.

8] Parties to act on the basis of an authenticated copy of this order.