

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.448 OF 2015

Meghdoot Co-op. Housing Society Limited through
its Chairman Ratnakar V. Ghule and another ... Applicants
Vs.
Devendra Madhukar Lohate and others ... Respondents

Mr. Sanjiv A. Sawant for Applicants.
Mr. Ramakant Paranjpe i/b. Mr. S. P. Kulkarni for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 08, 2015

P.C. :

Heard Mr. Sawant, learned Counsel for applicants and
Mr. Paranjpe, learned Counsel for respondent No.1 at length.

2. Mr. Sawant seeks leave to delete respondents No.2 to 7 as they are not the contesting respondents and respondent No.1 being the plaintiff is the only contesting respondent. On the motion made by Mr.Sawant, leave to delete respondents No.2 to 7 is granted. Amendment shall be carried out forthwith. Mr. Kulkarni waives service for respondent No.1. Rule. At the request and by consent of the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as original defendants No.1 and 2, have challenged the judgment and order dated 07.07.2015 passed by the learned 5th Joint Civil Judge, Senior Division, Nashik below exhibit-27 in Regular Civil Suit No.34 of 2015. By that order, the learned trial Judge rejected the application made by

the defendants No.1 and 2 under Order VII, Rule 11(d) C.P.C. for rejecting the plaint on the ground that Suit is barred in view of Sections 162, 163 and 164 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') as also Section 487 of the Bombay Provincial Municipal Corporations Act, 1949 and Section 80 C.P.C.

4. Mr. Sawant invited my attention to paragraph 4 of the impugned order. In paragraph 4, the learned trial Judge recorded a finding that the controversy raised in the Suit does not touch the business of the society and therefore, notice under Section 164 of the Act is not necessary. Mr. Sawant has invited my attention to bye-law No.2, and in particular clauses (a), (c) and (f) thereof to contend that the business of society includes redevelopment, and therefore, it touches the business of the society. The Suit is, therefore, bad for want of notice under Section 164 of the Act.

5. Mr. Paranjpe was not in a position to support the impugned order. He has taken me through the affidavit-in-reply filed by the plaintiff. He submitted that defendants No.1 and 2 did not produce the copy of the bye-laws before the learned trial Judge. The learned trial Judge, therefore, had no occasion to consider the objects of the society. He submitted that as for the first time defendants No.1 and 2 have produced the bye-laws, the impugned order may be set aside permitting defendants No.1 and 2 to produce bye-laws before the trial Court and all the contentions of the plaintiff in that regard may be expressly kept open.

6. Mr. Sawant also restricts his challenge in the trial Court qua provisions of Sections 162, 163 and 164 of the Act. In other words, defendants will not pray for rejection of the plaint on the grounds of

Section 487 of Bombay Provincial Municipal Corporations Act, 1949 and Section 80 C.P.C.

7. In view thereof, by consent of the parties, Rule is made absolute in the following terms:

a. The impugned order dated 07.07.2015 is quashed and set aside and application at exhibit-27 is restored to the file of the trial Court;

b. The learned trial Judge will consider whether the Suit is barred in view of Sections 162, 163 and 164 of the Act and will not go into the question whether it is barred under Section 487 of Bombay Provincial Municipal Corporations Act, 1949 and Section 80 C.P.C.;

c. Defendants No.1 and 2 shall produce a copy of the bye-laws in the trial Court;

d. All the contentions of the plaintiff on merits are expressly kept open;

e. Order accordingly.

8. Application is disposed of.

(R. G. KETKAR, J.)

Minal Parab