

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 179 OF 2006

The Cosmos Co-operative Bank Ltd.	..	Applicant
vs.		
Anil Shivnarayan Vaidya	..	Respondent

Ms Nikita Trivedi i/b. M/s. YKS Legal for Applicant.
Dr. A. K. Barthakur for Respondent.

CORAM : M. S. SONAK, J.
DATE: 10 APRIL 2015

P.C. :-

1] This Civil Revision Application challenges order dated 4 April 2006 made by the 6th Jt. Civil Judge, Senior Division, Pune, rejecting the applicant's application under Order 7 Rule 11 of the CPC urging rejection of the plaint instituted by the respondent – plaintiff.

2] The respondent- plaintiff claims to be an interior decorator whose services were engaged by the applicant, which is a Multi State Cooperative Society. The suit has been instituted to claim an amount of Rs.6,32,758/- along with interest at the rate of 12 per cent per annum towards unpaid bills for works actually executed by the respondent – plaintiff. One of the reliefs in the suit is a restraint upon the applicant bank to take out any proceedings against The

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

3] The case of the applicant is that such a plaint ought to be rejected on the following grounds :

A) that Section 84 of the Multi State Cooperative Societies Act, 2002 (said Act) which opens with a non-obstante clause, provides that a dispute of such nature has to be referred to arbitration;

B) That no notice as contemplated by Section 115 of the said Act was ever served upon the applicant and in absence of such notice, there is a bar to the institution of suit against the applicant;

C) Under the provisions contained in Section 34 of the SARFAESI Act, 2002, there is bar of jurisdiction to Civil Court entertaining suits or proceedings in respect of any matter which the authorities constituted under the said Act are empowered to determine and further, no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of powers conferred by or under the said Act.

4] Ms. Trivedi, the learned counsel for the applicant reiterated the aforesaid three grounds and submitted that the impugned order is required to be set aside, because the same, does not even consider the aforesaid three grounds. Ms Trivedi submitted that the

provisions of the said Act and the SARFAESI Act, 2002 are quite clear and on basis of the same, the plaint as filed deserves rejection. Ms Trivedi relied upon the decisions, to which reference has been made in the impugned order, in support of her submissions.

5] Dr. A. K. Barthakur, the learned counsel for the respondent submitted that the respondent – plaintiff, had initially raised a dispute under Section 91 of the Maharashtra Cooperative Societies Act in respect of his claim. However, the applicant objected to the jurisdiction of the cooperative court, precisely on the ground that the dispute as raised did not touch the constitution, management or business of the applicant and consequently the dispute was not maintainable under Section 91 of the Maharashtra Cooperative Societies Act. Such objection was in fact upheld by the Cooperative Court by order dated 3 May 2005 and the plaint was returned to the respondent for filing proceedings before the appropriate forum. Further, Dr. Barthakur submitted that the dispute raised, was not the one touching the constitution, management or business of the applicant and consequently there was no legal infirmity in the making of the impugned order. In so far as the relief concerning proceedings under the SARFAESI Act, 2002 is concerned, the learned counsel submitted that the same

has by now become infructuous.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, although the impugned order is not happily worded, there is no reason to interfere with final conclusion. Ms Trivedi is right in her submissions that the impugned order does not discuss the grounds raised by the applicant in sufficient detail. However, the suit in the present case was instituted in the year 2005. The impugned order is made in the year 2006. At this point of time, it would be harsh to remand the matter for reconsideration, particularly considering the facts and circumstances of this case.

7] The objection based upon Section 34 of the SARFAESI Act, 2002, appears to be well taken. However, merely because one of the prayers cannot be granted, that by itself, is no reason to reject the plaint in exercise of powers conferred by Order 7 Rule 11 of the CPC. Besides, as fairly pointed out by Dr. Barthakur, the learned counsel for the respondent, the prayer with regard to proceedings under the SARFAESI Act, 2002 has by now been rendered infructuous.

8] In so far as the grounds based upon Sections 84 and 115 of the said Act are concerned, it must be noticed that both the

provisions apply to disputes touching the constitution, management or business of the Multi State Cooperative Society. In the present case, if we have to go by the averments in the plaint, the respondent – plaintiff was an interior decorator and the disputes arise out of his unpaid bills for certain interior decoration works carried out by him for the applicant. A dispute of such nature cannot be said to be one touching the constitution, management or business of the society. Further, the applicant, in the proceedings before the cooperative court, itself took up the defence that the dispute raised by the respondent – plaintiff was not one touching the constitution, management or business of the society. Such defence was upheld by the Cooperative Court. In such circumstances, at least the applicant cannot approbate and reprobate in the matter. Accordingly, there is no merit in the ground that the plaint should be rejected under the provisions of Sections 84 and 115 of the said Act.

9] Ms Trivedi however contended that it is the applicant's defence that certain amounts were due and payable by the respondent – plaintiff in matter of loans obtained by him from the applicant bank and that such amounts were therefore set off against the alleged dues payable to the respondent – plaintiff. In this sense, Ms Trivedi submitted that the dispute is one touching the constitution, management or business of the applicant society. This

submission, cannot be accepted because in dealing with an application under Order 7 Rule 11 of the CPC, the Court is only concerned with the averments in the plaint. The defence, which the applicant – defendant may have in the suit, is not at all relevant, at this stage. Suffice to say that on basis of statements in the plaint, it cannot be said that the plaint is barred by any law.

10] Accordingly, there is no jurisdictional error in the making of the impugned order. It cannot also be said that the learned Civil Judge in exercise of his jurisdiction has acted with material irregularity. Accordingly, there is no warrant to interfere with the impugned order.

11] The Civil Revision Application is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)