

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 552 OF 2015**

Siddheshwar Co-operative Hsg Sty.

..Applicant

Vs.

Divakar Tukaram Nevrekar & Ors.

..Respondents

Mrs. Anjali Helekar for the Applicant

CORAM : R. M. SAVANT, J.

DATE : 14th SEPTEMBER, 2015

P.C.

1 The order dated 4-7-2015 passed by the Learned Judge of the City Civil Court, Dindoshi, Mumbai by which order the Learned Judge had answered the preliminary issue of jurisdiction by holding that the City Civil Court has the jurisdiction to try and entertain the Suit, is taken exception to by way of the above Petition.

2 The Suit in question being S.C.Suit No.865 of 2011 was filed by the Respondent No.1 herein against the Respondent Nos.2 to 4 suing them as promoters / developers in respect of the project in question. The Suit in question has been principally filed for enforcing the obligation of the Respondent Nos.2 to 4 as promoters / developers under the Maharashtra Ownership of Flats Act (MOFA) and the Plaintiff i.e. the Respondent No.1 herein is relying upon the Agreement for Sale dated 17-4-2003 by and between the Respondent Nos.2 to 4 and the Respondent No.1. The Respondent No.1 i.e.

the Plaintiff is virtually seeking the specific performance of the said Agreement. It seems that after the Suit was filed, the Applicant society filed an application for intervention and it accordingly came to be impleaded and joined as a party to the Suit. The Applicant thereafter raised the issue of the jurisdiction of the Civil Court to try the Suit as according to the Applicant, the Respondent No.1 is a member of the society and the Respondent Nos.2 to 4 were at the relevant time the Chief Promoters and therefore the dispute being by and between the society and its members, the same would be covered by Section 91 of the Maharashtra Co-operative Societies Act. In view of the objection raised by the Applicant to the jurisdiction of the Civil Court, the City Civil Court framed an issue as regards its jurisdiction to try and entertain the Suit and has by the impugned order decided the said issue against the Applicant by holding that it has the jurisdiction to try and entertain the Suit. The Learned Judge of the City Civil Court held that the Plaintiff i.e. the Respondent No.1 is seeking the enforcement of the obligation of the Respondent Nos.2 to 4 under MOFA and secondly that the redevelopment of the property is not the business of the society and therefore would not be covered by Section 91 of the Maharashtra Co-operative Societies Act.

3 The Learned Counsel appearing on behalf of the Applicant sought to reiterate the case of the Applicant before the Trial Court questioning the jurisdiction of the City Civil Court to entertain the Suit. The Learned Counsel

sought to place reliance on the judgment of a Division Bench of this Court in the matter of **Mohinder Kaur Kochar Vs. Mayfair Housing Private Ltd & Ors.**¹ wherein the Division Bench has held that initial construction may be the business of the housing society but subsequent redevelopment is not. The Learned Counsel would contend that since the instant case is of initial construction and not redevelopment, the jurisdiction of the City Civil Court is barred and that the dispute was required to be filed in the Co-operative Court.

4 In my view, it is not possible to accept the said contention of the Learned Counsel for the Applicant as it is well settled that whilst considering the issue of jurisdiction, the averments in the plaint have to be looked into, if the averments in the instant case are looked at, the same disclose that the Suit in question has been filed by the Respondent No.1/Plaintiff for enforcement of the obligation under MOFA. The Respondent Nos.2 to 4 who are now the promoters of the Applicant society have been mentioned in the said Agreement as promoters / developers and it is an admitted position that the society has been registered later on. The Plaintiff as indicated above is virtually seeking specific performance of the agreement which has been entered into between the Plaintiff i.e. the Respondent No.1 and that the Defendant Nos.1 to 3 i.e. the Respondent Nos.2 to 4. It is well settled that in so far as Section 91 of the Maharashtra Co-operative Societies Act is concerned, both the subject matter as well as the parties have to fall within the ambit of the said provision. In the

¹ 2012(6)ALL MR 862

instant case, apart from the subject matter, one of the parties i.e. the Respondent No.4 herein is not concerned in any manner with the society except being the party who has now been allegedly given the contract for completing the buildings, it would obviously not fall within the ambit of Section 91 of the Maharashtra Co-operative Societies Act. Hence the pre-requisites prescribed by Section 91 of the Maharashtra Co-operative Societies Act have not been satisfied in the instant case.

5 In that view of the matter, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order