

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 842 OF 2016

The Paradise Apartments CHSL	..	Petitioner
vs.		
Rohit Kapadia & Ors.	..	Respondents

Ms. Shefali Bhasin for Petitioner.
Mr. Robin Jaisinghania with Mr. Yash Kapadia, Mr. Rohit Kapadia,
Mr. A. Shukla and D. Sylvester i/b. Dhru & Co. for Respondent No.
1.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY 2016

P.C :

1] This petition is directed against the orders dated 23 November 2015 and 9 December 2015 made by the Co-operative Court and the State Co-operative Appellate Court, dismissing the petitioner's application for dealing with the issue of jurisdiction and maintainability prior to taking up any further applications or proceeding any further in the matter.

2] The petitioner by its application dated 23 November 2015, in fact, had prayed for the following relief :

"2. In view of the said Applications and the detailed Written Submissions made by them, it is prayed by the Opponents that the above said Applications made by the parties which are essentially and basically dealing with the issue of jurisdiction and maintainability be taken up first in view of the

settled law on the subject and finally decide the subject matter in the said Dispute for which act of kindness, the Opponents are as a duty bound shall ever pray.”

3] The petitioner's application dated 23 November 2015 was disposed of by the Co-operative Court on the same date by making the following order:

“Heard both Advocates & perused the Documents on record. It is seen that the matter is more than 10 years old. The Application U/s 9A & Dismissal of Dispute is pending. The 9A Application i.e., jurisdiction of Court is decide only on the averment & prayers made in the Dispute. Hence it is proper to heard the Appln U/S 9A, dismiss of Dispute & appln for discovery and inspection. If these appln heard together no loss will be caused to any of the parties. Hence I come to the conclusion that all these applns be heard together & separate orders will be passed on these applns. These appln is kept for arguments today, this appln be rejected.”

4] The State Co-operative Appellate Court at Mumbai has dismissed the petitioner's revision application against the aforesaid order dated 23 November 2015 by order dated 9 December 2015. Hence, the present petition.

5] Ms. Bhasin, the learned counsel for the petitioner has submitted that issue of jurisdiction and maintainability is always required to be taken up first and only thereafter, the Co-operative

Court can proceed to take up other issues, in case, it is ultimately determined that the proceedings instituted by the respondent are indeed maintainable. She submitted that in the present case, the petitioner has raised substantial grounds questioning the very maintainability of the proceedings and there was absolutely no justification in making the impugned order. She submitted that the petitioner cannot be made to suffer the entire proceedings, when in fact, the proceedings are in excess of jurisdiction and not at all maintainable. For all these reasons, she submitted that the impugned orders warrant interference.

6] In this case, it is to be noted that the proceedings commenced in the year 1999. The issues were framed in the year 2004 and even the trial has commenced in the year 2005. At this stage, no doubt, only the disputant – respondent has filed his affidavit in lieu of examination in chief and the cross-examination is yet to commence. Nevertheless, it is clear that the issues were framed in the year 2004 and the affidavit in lieu of examination in chief has been filed in the year 2005. In these circumstances, Co-operative Court cannot be said to have exercised its discretion unreasonably or perversely in taking the view that all the issues, including the issues relating to jurisdiction or maintainability can be decided together and the proceedings can be finally disposed of

one way or the other. In fact, in the facts and circumstances of the present case, this is a correct approach.

7] There is no question of applicability of Section 9A of the CPC or principles analogous thereto. At the highest, therefore, the petitioner could have applied for framing of preliminary issue under Order XIV Rule 2 of the CPC or principles analogous thereto. The petitioner has applied accordingly. In such a matters, there is undoubtedly a discretion vested in the Court, particularly where the proceedings have been instituted in the year 1999 and are still awaiting final disposal. Besides, any matters where issue of maintainability or jurisdiction involves mixed questions of both fact and law, it is only appropriate that all issues are decided together. Therefore, viewed from this perspective, there is no jurisdictional error in the making of the impugned orders.

8] The petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)