

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 281 OF 2014

Shri Sai Krupa Developers,
3, Parimal, Tilak Mandir Road,
Vile Parle (E), Mumbai – 400 057.

... Applicant

v/s

1. Bipin Purushottamdas
2. Sarla B. Sanghvi,
Both resident at 4, Ishvar Krupa Bldg.,
1st floor, Irla Gaothan Lane,
Vile Parle (W), Mumbai – 56.

3. The Hon. Secretary,
Sri Krupa Prasad CHS Ltd.,
153, S.V.Road, Nr.Golden Tobacco,
Vile Parle (W), Mumbai – 56.

... Respondents

Mr.Bharat Joshi for the applicant.

Mr.P.J.Thorat for Respondent No.1.

Coram: N.M. Jamdar, J.

Dated: 19 August 2016

ORAL ORDER:

By this application, the Applicant challenges the order passed by the learned City Civil Court Judge on 24 February 2014, rejecting the application/objection raised by the Applicant to the jurisdiction of

the Civil Court to try the suit instituted by the Respondent Nos.1 and 2/Plaintiffs. The application was moved taking objection to the pecuniary jurisdiction on the ground that, since the suit is filed by the Respondent Nos.1 and 2/Plaintiffs, as members of the co-operative housing society against the Respondent No.3 Society, it is not maintainable in view of Section 163 of Maharashtra Cooperative Societies Act.

2 Heard learned counsel for the parties.

3 As far as the objection to the jurisdiction in view of Section 163 of the Maharashtra Cooperative Societies Act is concerned, the plaint will have to be examined. In the plaint, the Respondent Nos.1 and 2/Plaintiffs have sought declaration that the Respondent Nos.1 and 2 are entitled for more area that is one which is offered pursuant to the redevelopment of the Society and that the Applicant developer should execute an agreement accordingly. The main prayer is therefore against the Applicant developer, though the grievance is made against the other members of the Society. By plain reading of the plaint, the dispute is referable to the redevelopment of Respondent No.3 Society and relief is sought against the Applicant - Developer. Learned counsel for the Applicant submitted that the Applicant-Developer has no role to play and the dispute is now only remains between Respondent No.1 and 2/Plaintiffs and Respondent

No.2 – Society. This, however, is the defence of the Applicant developer which will not determine the jurisdiction of the Court. Learned counsel for the Respondent Nos.1 and 2 has relied upon the decision in the case of *Suprabhat Co-op. Housing Society Ltd. & anr. v/s Span Builders & anr.*¹ in which it is held that, when a Society initially constructs the property, the construction of the property for a co-operative housing society being a prime objective, in dispute therein relates to business of the Society. The Division Bench, however, distinguished between such initial development and redevelopment that takes place by passage of time and has held that such redevelopment necessitated by passage of time cannot be said to be business of the Society. In view of this legal position, the view taken by the learned City Civil Court Judge cannot be faulted.

4 Learned counsel for the Applicant-Developer then submitted that the aspect of pecuniary jurisdiction has not been considered by the learned Judge even though the issue was framed. Learned counsel for the Respondent Nos.1 and 2 points out that, in view of proviso to Order 7 Rule 11, the only question that will remain is of payment of additional court fee if Court comes to that conclusion. Since this aspect of the matter is not considered by the learned Judge in the impugned order, it is open to the Applicant developer to take out an application pursuant to the proviso to Order 7 Rule 11. If such an application is taken out, it will be considered on its own merits.

1 2002(6) Bom.C.R. 257.

5 In the circumstances, the impugned order need not be interfered with, except for the liberty as granted to the Applicant as above.

6 The civil revision application is disposed of accordingly

(N. M. Jamdar, J.)