

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10933 OF 2015

MILIND MOHAN WADANGEKAR

...Petitioner

Versus

CONDOMINIUM OF SADAFULI
"A" APARTMENTS

...Respondent

....

Mr. Vilas B. Tapkir, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2016

P.C.

1. Heard Mr. Vilas Tapkir, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 14.8.2014 below Exh.25 as also order dated 12.3.2015 below Exh.28 in Regular Civil Suit No.464/2013 passed by learned Civil Judge, Junior Division, Pune. By order dated 14.8.2014, learned trial Judge rejected the application Exh.25 made by the petitioner, hereinafter referred to as the 'defendant' and held that section 7 of the Maharashtra Apartment

Ownership Act, 1970 (for short, 'Act') does not exclude the jurisdiction of the Civil Court. By order dated 12.3.2015 below Exh.28, learned trial Judge rejected the application made by the defendant for review of the order dated 14.8.2014.

3. The respondent, hereinafter referred to as the 'plaintiff' has instituted the suit for recovery of Rs.48,700/- from the defendant together with interest thereon @ 18% per annum from the date on which the amount became due and payable till actual realization of the amount. The plaintiff has instituted the suit on the ground that the defendant is not making payment of his contribution towards maintenance and repairs of common areas and facilities ever since he purchased the apartment in the year 2003.

4. Mr. Tapkir relied upon section 3(i) of the Act which defines the expression 'Competent Authority' as also section 7 of the Act to contend that if the apartment owner fails to pay the amount of maintenance charges amongst others, it becomes an actionable claim before the Competent Authority. He, therefore, submitted that the jurisdiction of the Civil Court is impliedly barred in view provisions of section 3(i)(2) read with Section 7 of

the Act. By order dated 14.8.2014, learned trial Judge rejected the application on the ground that section 7 of the Act does not exclude the jurisdiction of the Civil Court. Section 3(i) reads thus :

“3. Definitions.- In this Act, unless the context otherwise requires,-

....

....

(i) “Competent authority”,-

- (1) in relation to buildings constructed or to be constructed by the Housing and Area Development Authority established under section 3, or a Housing and Area Development Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977), or by a company, means the Deputy Chief Engineer or the officer referred to in sub-section (2) of section 7 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (Mah. XLV of 1963; and
- (2) in any other case, means the Registrar of Co-operative Societies as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961);”

. Section 7 of the Act reads thus :

“7. Compliance with covenants bye-laws and administrative provisions.- Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time

to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners, or in a proper case, by an aggrieved apartment owner.”

5. Perusal of these provisions, as also, other provisions of the Act does not either expressly or necessary implication exclude the jurisdiction of the Civil Court. Section 9 of CPC lays down that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Perusal of Section 3(i)(1) and (2) as also Section 7 and other provisions do not provide any remedy to the aggrieved person. There is also no express provision excluding the jurisdiction of Civil Court. In the case of ***Dhulabai vs. State of Madhya Pradesh and another, AIR 1969 SC 78***, Apex Court has laid down the principles regarding exclusion of jurisdiction of Civil Court, which are to the following effect.

“..... The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A

writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

6. Having regard to the settled position of law that the exclusion of the Civil Court's jurisdiction is not to be readily inferred, I do not find that the learned trial Judge has committed any error while passing the order dated 14.8.2014. In that order, the learned trial Judge specifically recorded a finding that there is no express provision in the Act that would bar the jurisdiction of the Civil Court. Section 7 of the Act also does not specifically contemplate that all the suits can be

referred to the Competent Authority as defined in Section 3(i)(2) of the Act. By order dated 12.3.2015, the learned trial Judge has rejected the application. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)