

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5402 OF 2013**

Kolhapur Udyam Co-operative Society Ltd.

.... Petitioner

Versus

Shri Vasant Rao Shivaji More & Ors.

...Respondents

Mr. Tejesh Dande i/b. Tejesh Dande & Associates, for the Petitioner.

Mr. Pratap Patil, for the Respondent Nos. 1 to 4.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 14th November, 2017.

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The present petitioner happens to be defendant No.16 in Regular Civil Suit No.82 of 2009 pending before the Civil Judge, Junior Division, Vadgaon. The suit is filed for partition and possession of ancestral properties. It is the contention of the present petitioner that defendant No.16 happens to be a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960. According to the petitioner, it is the business of the Society to purchase land and sell. In short, the Society is working as an estate agent. It appears that defendant No.16 was subsequently impleaded. According to the petitioner, in a notice

under Section 164 of the Maharashtra Co-operative Societies Act, 1960, no notice was issued to the present petitioner. It is the contention of the petitioner that the plaint deserves to be dismissed as far as the petitioner is concerned. The petitioner had therefore filed an application below Exhibit 88 under Order VII Rule 11 of C.P.C. Before the Court, it was the specific contention that the petitioner being a Co-operative Society, is governed by the provisions of the Maharashtra Co-operative Societies Act and upon failure to give notice under Section 164, the suit was bad and could not have been proceeded against defendant No.16. The learned Court has observed that the plaintiff had initially filed suit against defendant Nos. 1 to 15 for equal share in the ancestral property. The suit was filed on 22.5.2009. It appears that during the pendency of the suit i.e.on 3.8.2009, the petitioner had purchased the suit property. Therefore, it is an admitted position that the petitioner has come into picture only after institution of the suit and not before that and therefore the property in the possession of the petitioner was included in the list of properties mentioned while the suit was instituted at the first instance and therefore impleading defendant No.16 had become necessary.

3. The learned counsel for the respondent has placed implicit

reliance upon a Judgment of this Court in the case of **Shilpa Co-operative Housing Society v. Smt. Janabai Gulabrao Wangal & Ors. in Second Appeal No.417 of 2010**. The Judgment was rendered in a Second Appeal on 11.8.2014 by the Nagpur Bench of the Bombay High Court. The learned Court has observed as follows :-

“That, the expression “any act touching the business of the society” occurring in Section 164 above, is required to be carefully considered. It is clear that Section 164 is attracted only when a suit is filed against the society relating to an act touching the business of the society and not otherwise. The word ‘act’ must be construed to mean ‘legal act’. In the facts of the present case, what is clear to me is that the suit was filed by the sisters claiming delcaration, partition and separate possession of the ancestral property in which they had 1/7th share each. The body of the plaint and the prayers made in the suit do not have anything to do with any act touching the business of the society. The submission made by Mr. Vaidya, learned counsel for the appellant-society that it is a business of the society to purchase lands, carve out plots and sell them to the members of the society and, therefore, the suit property having been purchased for the same purpose,

it will have to be held that it was an act touching the business of society does not at all appeal to me. The plaint averments could be decisive in the first place and, secondly, even if the defence is considered, the fact remains that it cannot be said to be the business of the society to purchase the properties illegally and without legal and proper saleable title.”

The said Judgment touches the issue directly in question. That Section 164 of Maharashtra Co-operative Societies Act would not come into play and hence the findings recorded by the learned Civil Judge, Junior Division and the reasons assigned for rejecting the said application call for no interference at this stage. All the contentions of the petitioner are kept open. The learned counsel fairly submits that written statement has already been filed. The learned Court shall proceed with the suit qua the present petitioner after framing relevant issues which would touch the contentions raised in the written statement.

4. With these observations, the Petition stands disposed of. Rule is discharged.

(SMT.SADHANA S.JADHAV,J.)