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

WRIT PETITION NO. 5890 OF 2012

Molax Co-operative Housing Society Ltd. & Ors. .. Petitioners

Vs.

Mrs. Sugandha Vishnudas Manjrekar & Ors. .. Respondents

Mr. Kishor V. Tembe for the Petitioners.

Mr. S. P. Srivastava for Respondent No.6.

CORAM : SMT. SADHANA. S. JADHAV, J.

DATE : 15th NOVEMBER, 2017.

P. C. :

1. Heard.
2. Rule. Rule made returnable forthwith with the consent of the parties.
3. The petitioners herein happens to be the opponent No.14 in CC-I/75 of 1997 a dispute which was filed by some of the members of the Co-operative Society against the other members of the Co-operative Society contending therein that the opponent Nos.1 to 12 had encroached upon common area of the society and were conducting a business in the common premises. It was contended in the dispute that opponent Nos.1 to 12 had contravened bye laws of the society. There is specific allegations in para 19 that the disputant had complained about the same on several occasions to the administrator. However, the administrator had chosen to stand a mere spectator to such events. The prayers in the said

dispute are as follows:

(b) *That it be declared that the Opponents No. 1 to 12 have no title, right or interest of whatsoever nature in the Parking Places still not numbered, shops, garages, and Flats No.206, 207, in the Molax Building and Flat No. 1, 2 and 308 in the Samrat Building and the Terrace of the Samrat Building of the Molax Co-operative Housing Society Limited which are in contraventions to the Bye Laws, of the Molax Co-operative Housing Society Limited at Plot Nos. 64 to 68 and 70 at Sector No.1, Chedda Nagar, Chembur, Mumbai 400 089.*

(c) *That it be declared that the alleged Agreements of the Opponents creating rights in the Parking Places still not numbered, shops, garages, and Flats No. 206, 207, in the Molax Building and Flat No. 1, 2 and 308 in the Samrat Building and the Terrace of the Samrat Building of the Molax Co-operative Housing Society Limited which are in contraventions to the Bye Laws, of the Molax Co-operative Housing Society Limited at Plot Nos. 64 to 68 and 70 at Sector No.1, Chedda Nagar, Chembur, Mumbai 400 089 be treated as Null and Void and that all the Opponents 1 to 12 be ordered to vacate and handover possession of the same to the Society.*

(d) *That the Opponents No. 1 to 13, their servants, agents or any other person claiming through them be permanently restrained by an order of injunction of this Hon'ble Court from preventing the Disputants, their agents and servants from having full and free access to the Parking Places still not numbered, shops, garages, and Flats No. 206, 207, in the Molax Building and Flat No. 1, 2 and 308 in the Samrat Building and the Terrace of the Samrat Building of the Molax Co-operative Housing Society Limited which are in contraventions to the Bye Laws, of the Molax Co-operative Housing Society Limited at Plot Nos. 64 to 68 and 70 at Sector No.1, Chedda Nagar, Chembur, Mumbai 400 089.*

4. Opponent No. 14 had then filed an application before the Co-operative Court contending therein looking at the nature of the dispute the fact that the disputants are not claiming any relief against the society. The Co-operative Court would have no jurisdiction under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and hence had filed an application under Section 9 of the Code of Civil Procedure. It is pertinent to note that the said application was supported by an affidavit which was filed in detail to contend the reasons as to why the Co-operative Court would have no jurisdiction. The original disputants had filed their reply and had specifically contended that the Co-operative Court would have jurisdiction. The disputants had denied that the said premises were given to opponent Nos.1 to 12 by the builders by virtue of same agreement and had put opponent No.14 to strict proof to prove the same. The learned Co-operative Court by an order dated 19.03.2010 had rejected the applications filed by opponent No.14, as the opponent No.14 had not raised all the contentions in the application to show that the Co-operative Court has no jurisdiction. It appears that the learned Co-operative Court had perused the affidavit which was filed to support the application considering it to be a relevant factor. All that the Court had considered is that disputant Nos.1 to 8 are the members of opponent No.14 as they happen to be the members of the society. However it was the specific contention of the opponent No.14 that the disputant Nos.3 and 4 are not the members of the society. The disputants had challenged the

conversion of the garages into business premises by opponent Nos.1 to 12. Being aggrieved by the order dated 19.03.2010, opponent No.14 had filed a Revision Application before the Maharashtra State Co-operative Appellate Court. The Appellate Court by an order dated 12.12.2011 was pleased to reject the Revision Application thereby upholding the views of the Maharashtra State Co-operative Court. Hence, this writ petition.

5. The present petition is filed on 20.06.2012. Heard respective counsel at length. The learned counsel for the petitioners has urged that the dispute which is filed before the Co-operative Court is a dispute between one set of members against the other set of members. There is no specific relief claimed as against the society and therefore it cannot be said that it is a dispute between the society and its members or its erstwhile members and therefore the Co-operative Court would not have any jurisdiction. To substantiate his contention, the learned counsel for the petitioners has placed implicit reliance upon the Judgment of the Division Bench of this Court in the case of **Alok Agarwal & Ors. Vs. Punam Co-operative Housing Society Ltd. & Oprs. and Pratap Issardas Bhatia & Ors. Reported in MANU/MH/1708/2012.** In fact, that was an appeal which had arisen from the decision of learned Single Judge of this Court on three Notices of Motion taken out by the parties to the said petition. The Hon'ble Division Bench has considered as to whether the subject matter of the suit was such as would fall within the jurisdiction of the Co-operative Court under Section 91 of the Maharashtra Co-operative

Societies Act, 1960. The Court had considered the specific provisions under Section 91 which begin with a non obstante clause and provides that the disputes touching particular case between the parties which meet the description stated therein shall be referred by any of the parties to the dispute in the Co-operative Court. The Hon'ble Division Bench had considered that, before sub-section (1) of Section 91 can be attracted two principal requirements must be fulfilled. Firstly, the subject matter of the dispute must fall within the ambit of the disputes covered by the provision. Secondly, both the parties to the dispute or one or either of them must be of the description spelt out in Clauses (a) to (e) of the provision. Among the disputes which fall within the jurisdiction of Co-operative Court are disputes touching the constitution and the management of the business of the society.

6. The learned counsel has placed implicit reliance upon para 15 of the said Judgment and has submitted that the said Judgment was delivered in consonance with the Judgment of the Hon'ble Apex Court in the case of **Ramesh Chand Ardawatiya Vs. Anil Panjwani** reported in **AIR 2003 SC 2508**.

7. The learned counsel for the respondents has vehemently submitted that, in fact it was a duty of the society to take objections since the bye laws of the society had been contravened. According to the learned counsel for the respondents, the disputants had made several applications to opponent No.13 i.e. the Administrator who has failed to

take any action. That, the rights of the disputant members of the society has been affected and the business of opponent Nos.1 to 12 has caused grave prejudice to the disputants. The learned counsel further submits that it was not necessary to frame a preliminary issue since all the aspects would be matter of evidence and the same could be substantiated by adducing evidence. It is further stated that the disputants as well as opponent Nos.1 to 12 are the members of opponent No.14 and the activities in the said premises are touching the business of the society and therefore the Co-operative Court would have jurisdiction.

8. Upon perusal of the records and the submissions advanced across the bar, it is clear that there is no averments in the dispute or in the affidavit-in-reply that there is any dispute with the society. There is no averment that the society had acted in collusion with opponent Nos. 1 to 12. It was neither the case of the disputants in the dispute that the said activities were being conducted with permission of the society and therefore it had affected the very conduct and the business of the society. It cannot be said to be dispute between the society and its business. The prayers in the dispute are in the nature of seeking a declaration and injunction and recovery of the said premises in favour of the society and that the society would directly not have any role to play with the same. Upon perusing the Judgment of the Hon'ble Division Bench of this Court which is almost similar to the facts in issue, this Court is of the opinion that the Co-operative Court would have no jurisdiction to try the said dispute as

the nature of the reliefs sought are declaratory in nature. In fact, the disputants ought to have approached the Civil Court seeking removal of encroachment.

9. It is pertinent to note that the Co-operative Court had rejected the application seeking framing of the preliminary issue and had not decided the preliminary issue of the jurisdiction. The learned counsel for the respondents has submitted that this Court may direct the Co-operative Court to frame the preliminary issue. At this stage, learned counsel for the petitioners has drawn attention of this Court to para 5 of the order of the Co-operative Court dated 19.03.2010 which reads thus:

5. *The points for determination along with my findings thereon are as under:*

<i>SR. NO.</i>	<i>POINTS</i>	<i>FINDINGS</i>
<i>1</i>	<i>Whether this Court has jurisdiction to try and entertain the present dispute?</i>	<i>In the affirmative.</i>
<i>2</i>	<i>What order?</i>	<i>The applications are rejected.</i>

It can be inferred that the Court had framed the issue as to whether the Co-operative Court has jurisdiction to try and entertain the dispute. In fact, it was for the Court to decide as to whether framing of the issue is necessary, but the issue is framed and the applications are rejected. Since the dispute is pending for the last 20 years, it would not be

appropriate to direct the Co-operative Court to once again frame a preliminary issue as to whether the dispute could be entertained before the Co-operative Court. Hence, order dated 19.03.2010 passed by the Co-operative Court as well as order dated 12.12.2011 passed by the Revisional Court deserves to be quashed and set aside. The learned counsel for the respondents at this state has submitted that opponent Nos.1 to 12 still continued to carry on the same activities and therefore according to the learned counsel it is continuing act. The disputants would be at liberty to approach the Civil Court for the declaratory reliefs as well as removal of encroachment and recovery of the possession.

10. In view of this, both the orders are quashed and set aside. The petition is allowed. Rule is made absolute in the above terms.

11. The petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]