IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (ST.) NO.32520 OF 2016

Kumbhi Kasari Sahakari Bank Limited
through Recovery Officer Vishwas D. Patil … Applicant
Vs.
Prashant Sadashiv Sawant and another … Respondents

Mr. Amit B. Borkar for Applicant.

**CORAM : R. G. KETKAR, J.**
**DATE : JANUARY 09, 2017**

**P.C.** :

Heard Mr. Borkar, learned Counsel for applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 18.11.2016 passed by the learned 8th Joint Civil Judge, Junior Division, Kolhapur below exhibit-32 in Regular Civil Suit No.365 of 2014. By that order, the learned trial Judge rejected the application filed by the defendant No.2 under Order 7, Rule 11(d) of C.P.C. for rejection of the plaint on the ground of not issuing notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') prior to the institution of the Suit.

3. Respondent No.1, hereinafter referred to as 'plaintiff', has instituted Suit against defendant No.2 and respondent No.2, hereinafter referred to as 'defendant No.1', for specific performance of contract. In paragraph 6 of the plaint, plaintiff asserted that defendant No.1 executed agreement of sale on 13.08.2012 for a consideration of Rs.2,00,000/-. Out of Rs.2,00,000/-, defendant No.1 has accepted Rs.75,000/- and executed agreement of sale on 13.08.2012. It is further averred in

paragraph 6 that defendant No.1 has obtained loan from defendant No.2. Defendant No.2 though is impleaded as a party, no relief is claimed against it. It is further averred that defendant No.1 has to clear dues of defendant No.2 as he has obtained loan of Rs.4,00,000/-. Plaintiff is ready and willing to pay the dues of defendant No.2. Defendant No.2 is impleaded as a party as it should not affect the final outcome of the Suit.

4. Defendant No.2 has filed written statement inter alia contending that plaintiff has instituted Suit in collusion with the defendant No.1 with a view to defeating the huge dues of defendant No.2. Defendant No.1 has obtained multi-purpose loan of Rs.4,00,000/- from defendant No.2 on 22.01.2013 by executing promissory note, loan bond and other necessary loan documents and three sureties. The loan was advanced at the rate of 15% p.a. As on 30.06.2014, Rs.4,42,943/- is an outstanding amount. In paragraph 8 of the Written Statement, defendant No.2 denied the allegations made by the plaintiff in paragraph 6.

5. During the pendency of the Suit, defendant No.2 filed application at exhibit-29 under Section 9-A of C.P.C. for framing preliminary issue of jurisdiction. By order dated 06.08.2016, the learned trial Judge rejected that application. It is thereafter on 27.09.2016, defendant No.2 filed application exhibit-32 under Order 7, Rule 11(d) of C.P.C. rejecting the plaint on the ground that prior to institution of the Suit, notice under Section 164 of the Act is not given to the plaintiff. By the impugned order, the learned trial Judge has rejected the application.

6. In support of this Application, Mr. Borkar strenuously contended that plaintiff has ingeniously drafted the plaint. By ingenious drafting of the plaint, it cannot be said that the Suit is not hit by Section 164 of the Act. Defendant No.1 has admittedly obtained loan from defendant

No.2. The transaction between the defendant No.1 and defendant No.2 touches the business of the society. Admittedly, plaintiff did not issue notice under Section 164 of the Act prior to institution of the Suit. Plaint is, therefore, liable to be rejected as per Order 7, Rule 11(d) of C.P.C.

7. I have considered the submissions advanced by Mr. Borkar. I have also perused the material on record. Perusal of paragraph 6 of the plaint shows that plaintiff has referred to obtaining loan by defendant No.1 from defendant No.2. In fact, plaintiff has asserted that he is not claiming any relief against defendant No.2. However, as defendant No.1 is under obligation to clear the loan amount of defendant No.2, in the event of defendant No.1 failing to clear dues of defendant No.2, plaintiff is ready and willing to deposit the amount in defendant No.2 Bank. Defendant No.2 ought to have filed application in the trial Court to direct the plaintiff to deposit the dues of the Bank either in the trial Court or with the Bank. Instead of filing such type of application, defendant No.2 filed application under Section 9-A of C.P.C., which was rejected by the trial Court. Not satisfied with this, defendant No.2 filed application under Order 7, Rule 11(d) of C.P.C. for rejection of the plaint for not issuing prior notice under Section 164 of the Act.

8. Mr. Borkar submitted that plaintiff has also claimed injunction against defendant No.2. He has invited my attention to prayer clause (e). Perusal of prayer clause (e) clearly shows that plaintiff has essentially sought injunction against defendant No.1 and not against defendant No.2. Instead of filing application for directing the plaintiff to deposit dues of the defendant No.2 Bank, defendant No.2 unnecessarily filed application under Section 9-A as also under Order 7, Rule 11(d) of C.P.C., more so when no relief was claimed against it.

9. As noted earlier, in paragraph 6 of the plaint, plaintiff averred that defendant No.1 has obtained loan of Rs.4,00,000/- from defendant No.2. It is the responsibility of defendant No.1 to clear the dues of defendant No.2. If required, plaintiff is ready and willing to deposit balance amount in defendant No.2 Bank. Defendant No.2 is really not concerned with the relief of specific performance sought by plaintiff against defendant No.1. Defendant No.2 is interested in securing repayment of its loan amount. In paragraph 8 of the written statement, defendant No.2 denied the averments made by the plaintiff in paragraph 6 of the plait. Even in the entire written statement, defendant did not pray for issuing direction to the plaintiff to clear its dues by depositing the amount either in the trial Court or with the Bank. It is settled position of law that while decreeing the Suit for specific performance, Court has ample power to impose conditions. In the present case, in the event of Court decreeing the Suit for specific performance, it can direct the plaintiff to clear the dues of defendant No.2 Bank and get the sale deed executed from defendant No.1, and on his failure, through the Court. Instead of seeking direction against the plaintiff to deposit the amount of dues, defendant No.2 filed applications one under Section 9-A and another under Order 7, Rule 11(d) of C.P.C. In my opinion, the applications filed by the defendant No.2 framing preliminary issue under Section 9-A and Order 7, Rule 11(d) of C.P.C. are nothing but abuse of process of Court as also process of law. By filing such frivolous applications, defendant No.2 has not only wasted trial Court's time but also of this Court's time. In my opinion, the learned trial Judge has rightly rejected these applications.

10. In the case of In the case of ***Ramrameshwari Devi Vs. Nirmala Devi***, **(2011) 8 Supreme Court Cases 249**, the Apex Court has observed that time has come for imposing realistic costs for delaying litigation as

also for raising frivolous pleas. In paragraphs 52 and 54, it was observed thus:

> "52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.
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> A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.
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> B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.
>
> C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.
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> D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.
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> E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.
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> F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.
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> G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.
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> H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

> I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.
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> J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.
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> 54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

11. In paragraph 55, the Apex Court observed that the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts.

12. In the case of ***Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria***, **AIR 2012 SC 1727**, the Apex Court referred to the decision of **Ramrameshwari Devi** (*supra*). In paragraphs 84 and 85, it was observed thus:

> "**False claims and false defences**
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> 84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the

> hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.
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> 85. This Court in a recent judgment in Ramrameshwari Devi and Ors (AIR 2011 SC (Civ) 1776: 2011 SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

13. In the case of ***Messer Holding Ltd. Vs. Shyam Madanmohan Ruia***, **AIR 2016 SC 1948**, in paragraph 44, the Apex Court referred to the decision of **Ramrameshwari Devi** *(supra)* and observed thus:

> "44. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases."

14. In my opinion, the present proceedings are nothing but abuse of process of court as also abuse of process of law. In view of the decision of the Apex Court in **Ramrameshwari Devi** *(supra),* **Maria Margarida Sequeria Fernandes** (*supra*) and **Messer Holding Ltd** (*supra*), Application deserves to be dismissed by imposing exemplary costs so

that in future such type of frivolous applications are not filed by the defendant No.2. Defendant No.2 is at liberty to file application before the trial Court for directing the plaintiff to deposit dues either in the trial Court or in the Bank. Subject to this Application fails and the same is dismissed with costs quantified at Rs.25,000/- to be paid by the applicant-defendant No.2 to the Legal Services Authority, Kolhapur within 4 weeks from today. In case defendant No.2 does not pay the costs within 4 weeks from today, the Collector, Kolhapur shall recover it as a land revenue from defendant No.2. In case defendant No.2 obtains suitable order from higher Court, it shall forthwith transmit copy of that order to the Collector, Kolhapur. Let the authenticated copy of this order be transmitted to the Collector, Kolhapur.

**(R. G. KETKAR, J.)**

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