

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11960 OF 2012

Kalpana Thakore & Anr.	..	Petitioners
vs.		
Dilip S. Shah & Ors.	..	Respondents

Mr. V. Y. Sanglikar i/b. Ms V. A. Ugale for Petitioners.
Mr. Kalpesh Joshi with Ms Nisha Shah for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

1] Mr. Sanglikar for the petitioners and Mr. Kalpesh Joshi for the respondent nos. 1 and 2.

2] The challenge in this petition is to the order dated 22nd November 2012 made by the City Civil Court, Mumbai, dismissing the petitioners application under section 9A of the Civil Procedure Code questioning the jurisdiction of the civil court to entertain short cause suit no. 2713 of 2011. The objection to jurisdiction is on the ground that the dispute as raised in the plaint constitutes a dispute within the meaning of section 91 of the Maharashtra Co-operative Societies Act, 1960 (said Act) and therefore, it is not the civil court but the special authorities constituted under the said Act which will have jurisdiction to entertain and decide a dispute of this nature.

3] Mr. Sanglikar, the learned counsel for the petitioners submits that the dispute raised in the plaint touches the management and business of the cooperative society which has in fact been impleaded as defendant no. 3 to the suit. Mr. Sanglikar refers to the averments in paragraph 4(i) and 4(n) of the plaint to point out that therein, there is clear reference made to the resolutions of the general body of the society. Mr. Sanglikar submits that if any relief is granted in a suit of this nature, such relief, is bound to conflict with the resolutions of the general body of the society. Mr. Sanglikar submits that there are several members of the society, who also, feed birds and if any restraint order is made in this suit, then, the interests of such members may also be affected. In any case, Mr. Sanglikar submits that from all this, it is quite apparent that the dispute as raised in the plaint, is nothing but a dispute which is covered under the provisions of section 91 of the said Act. Mr. Sanglikar submits that section 91 of the said Act commences with a *non obstante* clause and therefore, it is quite clear that the civil court, lacked jurisdiction to entertain the suit as instituted. For all these reasons, Mr. Sanglikar submits that the impugned order dated 22nd November 2012 made by the civil court is in excess of jurisdiction or in any case, this is a matter where civil court seeks to

usurp jurisdiction which is not vested in it. For all these reasons, Mr. Sanglikar submits that the impugned order is liable to be set aside and the suit, as instituted, be dismissed as the civil court, lacks jurisdiction to entertain the same.

4] Mr. Joshi, the learned counsel for the respondent nos. 1 and 2 (original plaintiffs) submits that the society has been impleaded as only a proforma defendant to the suit. He submits that neither is any relief claimed against the society nor is this a case where the plaintiffs seek to enforce any resolutions of the society. Most importantly, Mr. Joshi points out that this is purely a personal dispute between two neighbours in which, one neighbour (plaintiffs) allege nuisance by the other neighbours (petitioners - defendants). He submits that such a dispute neither touches the management nor business of the society and therefore, such a dispute is clearly not a dispute covered under section 91 of the said Act. For all these reasons, Mr. Joshi submits that the present petition may be dismissed.

5] Rival contentions now fall for determination.

6] Section 91 of the said Act *inter alia* provides that notwithstanding anything contained in any other law for the time

being in force, any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of the society shall be referred by any of the parties to the dispute to the cooperative court if both the parties thereto are one or the other as described in sub clauses (a) to (e) of section 91(1) of the said Act. In this case, there is no dispute that the plaintiffs and the defendants are the parties who may be covered under sub clauses (a) to (e) of section 91(1) of the said Act. However, the moot question is whether the dispute as raised in the plaint, is a dispute which touches the management or the business of the society as urged by Mr. Sanglikar, the learned counsel for the petitioners?

7] From the perusal of the plaint, it is quite clear that the plaintiffs have alleged nuisance on the part of the defendant nos. 1 and 2. The defendant no. 1 is reported to have expired and therefore, the suit proceeds only against the defendant no. 2. The complaint is in regard to nuisance arising out of feeding of birds by the defendant no. 2 and the consequent nuisance (alleged) caused thereby to the plaintiffs, who live in the apartment which is placed above the apartment of the defendant no. 2. The society has been impleaded as defendant no. 3 to the suit. However, there is no relief claimed

against the society. On perusal of the averments in paragraph 4(i) and 4(n) of the plaint, though, there is some reference to resolution of the society, it is quite clear that the suit does not seek any enforcement of such resolution. In such circumstances, the civil court, is quite right in taking the view that the dispute so raised, neither concerns the management nor the business of the society. If these jurisdictional pre-conditions are not satisfied, then obviously this is not a dispute which can be said to be covered under section 91 of the said Act. The *non obstante* clause will apply only where the jurisdictional predicates prescribed in section 91 are fulfilled. Since the dispute as raised in the plaint, is neither a dispute which can be said to be touching the management nor the business of the society, it cannot be said that the jurisdiction of the civil court stands ousted in this matter.

8] For the aforesaid reasons, there is no jurisdictional error in the impugned order so as to warrant interference under Article 227 of the Constitution of India.

9] This petition is therefore dismissed. There shall be no order as to costs.

10] It is clarified that this court has made no observations on the

merits of the matter. Therefore, the civil court, to decide the matter on its own merits and in accordance with law.

11] At this stage, Mr. Sanglikar, requests for continuation of interim relief granted on 20th December 2012 for a further period of six weeks from today. Since, the interim order is in operation since the year 2012, the same is extended by a period of six weeks from today as prayed.

(M. S. SONAK, J.)

Chandka