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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1458 OF 1994

Kirtansingh Jagirsingh Grewal	..Petitioner.
V/s.	
Grewal Co-operative Housing Society & Ors.	..Respondents.

Mr.S.S.Kanetkar with Raghvendra B.Kulkarni for the petitioner.

Mr.Nitesh J.Mohite I/b. D.R.More for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : APRIL 4, 2019

ORAL JUDGMENT

Heard Mr.Kanetkar,learned counsel for the petitioner and Mr.Mohite, learned counsel for respondent No.1.

2. Challenge in this petition is to the judgment and order dated November 13, 1992 made by the Maharashtra State Appeal Court (Appeal Court) in Appeal No.3/1990 (impugned judgment and order).

3. By the aforesaid impugned judgment and order, the Appeal Court set aside the judgment and order dated October 15, 1989 made by the Co-operative Court in case No.66/1977.

4. The petitioner is the original disputant and the respondents

are original opponents in the Dispute Case No.66/1977. For the sake of convenience, therefore, the petitioner will be referred to as the disputant and respondent No.1 will be referred to as the society.

5. The case of the disputant is that, in terms of agreements dated May 9, 1973 and September 22, 1974, the disputant was appointed as an agent of the society in order to undertake the certain works like acquisition, demarcation and development of the property, registration of the society and other works. The agreements were entered into with the promoter of the society and eventually, the agreements were duly ratified by the society. It is the case of the disputant that, he performed the duties which were assigned to him under the two agreements but the society and its members defaulted in the payment of the amount which were due to him. On this basis, the disputant claimed an amount of Rs.1,14,458.47 from the society and its members.

6. The society and its members who were impleaded as the opponents in the aforesaid dispute, contested the claim of the disputant on merits as well as on the issue of jurisdiction of the Co-operative Court. The evidence was led by and on behalf of the parties. Ultimately, the Co-operative Court by its judgment and order dated October 15, 1989 ordered the society and its members to pay to the disputant, jointly and severally a sum of Rs.1,14,458,47 with costs and

future interest at the rate of 18% p.a. on Rs.1,09,830/- from October 2, 1977 till realisation.

7. The operative portion of the Co-operative Court's order dated October 15, 1989 reads thus:-

“ Opponent Nos.2 to 45 shall pay to disputant jointly and severally a sum of Rs.1,14,458.47 paise (Rs. one lakh fourteen thousand four hundred fifty eight and paise forty seven only) with costs and future interest @ Rs.18% P.A. on Rs.1,09,830/- from 2/10/1977 till realisation.

Opponent No.1 is directed to collect the claiming amount from said opponents and pay it to the disputant in the capacity of society.

The opponent Nos.18, 32, 39 and 46 are deleted by Exh.13. ”

8. Almost 20 members of the society who had been impleaded as opponents in the Dispute No.66/1977 appealed the judgment and order dated November 13, 1992, instituting Appeal No.3/1990. By judgment and order dated November 13, 1992 the Appeal Court has allowed the appeal and set aside the judgment and order dated October 15, 1989 by the Co-operative Court. It is against this impugned judgment and order dated November 13, 1992 that the disputant has instituted the present petition.

9. Mr.Kanetkar, learned counsel for the petitioner submits that the Appeal Court has not at all gone into the merits of the matter but simply, yet erroneously ruled that the dispute case of the disputant

did not constitute a '*dispute*' as contemplated under section 91 of the Maharashtra Co-operative Societies Act, 1960 (the said Act). He submits that from the materials placed on record, it is very apparent that the disputant was nothing but an agent of the society and consequently, the dispute raised by the disputant in his capacity as an agent of the society against the society and its members, was very much maintainable under section 91 of the said Act.

10. Mr.Kanetkar submits that the Appeal Court has really not gone into the issue as to whether a dispute raised relates to the business of the society. However, he submits that since this was a Co-operative Housing Society, the dispute clearly related to the business of such Co-operative Housing Society which was providing facilities and amenities to its members.

11. Mr.Kanetkar relied upon the judgment of this Court in the case of *Lakhani Sahakari Shetki Kharedi Vikri Sanstha Ltd. at Lakhani V/s. Moreswar Bapu*¹, in which it is held that the word “Agent” in section 91 of the said Act must be construed in comprehensive terms and not in narration. He submits that the Appeal Court has failed to construe the term “Agent” in comprehensive terms and, therefore, the view taken by the Appeal Court warrants interference.

12. Mr.Kanetkar submits that the Appeal Court has clearly

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erred in holding that the pre-incorporation contract does not bind the society. He submits that there is ample material on record to indicate that a contract which was entered into between the promoters of the society and the disputant which was ultimately ratified by the society and its members. He points out that the society and its members also had benefited from the contract and in these circumstances, the Appeal Court was entirely in error in holding that the pre-incorporated contract does not bind the society and the same cannot be enforced. For all the aforesaid reasons, Mr.Kanetkar submits that the impugned order and judgment is vulnerable and is required to be set aside. Mr.Kanetkar submits that the view taken by the Co-operative Court in its judgment and order dated October 15, 1989 was legal and correct view and, therefore, the same needs to be restored.

13. Mr.Mohite, learned counsel for respondent No.1-society defends the impugned order on the basis of reasoning reflected therein. He points out that there is no jurisdictional error in the view taken by the Appeal Court and, therefore, this petition may be dismissed. He also points out that the impugned judgment and order has not rejected the claim of the petitioner but merely directed the Co-operative Court to return the plaint (dispute application) to the disputant for presentation in the proper Court. For all these reasons, Mr.Mohite submits that this petition may be rejected.

14. The rival contentions now fall for my determination.

15. The most important issue which arises is, whether the dispute raised by the disputant, constitutes a “dispute” within the meaning of section 91 of the said Act. Section 91 of the said Act reads as under :-

“ Section 91 - Disputes

(1) Notwithstanding 1 [anything contained] in any other law for the time being in force, any dispute touching the constitution, 2 [elections of the committee or its officers other than elections of committees of the specified societies including its officer], conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, 3 [to the co-operative Court] if both the parties thereto are one or other of the following:--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the official Assignee of a de-registered society].

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society 5 [or a person who claims to be a member of the society;]

[(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or

regulations have been imposed, made or prescribed under [sections 43, 44 or 45](#), and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;)

(e) any other society, or the Liquidator of such a society 7 [or-de-registered society or the official Assignee of such a de-registered society].

[Provided that, an industrial dispute as denned in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under section 73-1C or a society specified by or under [section 73-G](#), or refusal of admission to membership by a society to any person qualified therefor 9 [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or [sub-section \(1\) of section 137](#) or the recovery proceeding of the Registrar or any officer sub ordinate to hi m or an officer of society notified by the State Government, who is empowered by the Registrar under [sub-section \(J\) of section 156](#),] 10 [or any orders, decisions, awards and actions of the Registrar against which an appeal under [section 152 or 152A](#) and revision under [section 154 of the Act](#) have been provided.] shall not be deemed to be a dispute for the purposes of this section.]

[(2) * * * * *]

(3) Save as other wise provided under 12 [sub-section (2) to section

93], no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.--A dispute between the Liquidator of a society 13 [or an official Assignee of a de-registered society] and 14 [the members (including past members, or nominees, heirs or legal representative or deceased members)] of the same society shall not be referred 15 [to the co-operative Court] under the provisions of sub-section (1).

Explanation 2.--For the purposes of this sub-section, a dispute shall include--

- (i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;*
- (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;*
- (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;*
- (iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment. ”*

16. In the present case, Mr.Kanetkar, learned counsel for the

petitioner has stressed on the two following aspects to urge that the dispute raised, was indeed a dispute under section 91 of the Act:-

- (a) That the dispute relates to the business of the society;
- (b) The dispute was between the society and its agent i.e. the disputant.

17. There is no doubt that for a dispute to be regarded as a “dispute” under section 91 of the Act, both the aforesaid conditions need to be complied with. It means that the disputant will have to establish that the dispute raised pertains to the business of the society and further the dispute is between the parties which are referred to under section 91 of the Act. Further, there is no doubt that a dispute between a society and its agent, provided that such dispute relates to the business of the society or management of the society, will be covered under section 91 of the Act.

18. As was correctly pointed out by Mr.Kanetkar, neither the Co-operative Court nor the Appeal Court have gone into the issue as to whether the dispute relates to the business of the society. The Co-operative Court has, however, held that the since it is a dispute between the society and its agent i.e. the disputant, the same was maintainable under section 91 of the Act. The Appeal Court has, however, held that the disputant was not an agent of the society and, therefore, the dispute as raised was not maintainable under section 91 of the Act. This,

however, does not mean that this Court is precluded from going into the issue as to whether the dispute as raised, relates to or touching the business of the society. However, necessity to decide with this issue will arise only if the view taken by the Appeal Court that the disputant was not an agent of the society, is required to be disturbed. Therefore, it is only appropriate to consider whether the disputant in the present case could really be called as an 'agent' of the society in relation to the dispute raised by him.

19. The dispute in the present case arises out of two agreements dated May 9, 1973 and September 22, 1974. Therefore, the analysis of the two agreements becomes important.

20. The agreement dated May 9, 1973 has been specifically styled as “*agreement for sale*”. In the agreement, the disputant has been described as “*one who writes*” and Kirtansingh Jagirsingh Grewal and another have been described as the persons “*who accept the writing*”. This is the normal manner in which the vendor and purchaser are described in agreement for sale. From the context therefore, is very apparent that the disputant is described as the 'vendor' and Grewal and another were described as "purchasers" in the agreement for sale dated May 9, 1973.

21. No doubt, nomenclature of the agreement in such matters

is not at all conclusive and, therefore, reference is necessary to the contents of the agreement. The contents of the agreement also undisputedly indicates that this was entered as an 'agreement for sale' between the disputant and Grewal and another who might have acted as a promoter of the society, which was yet to be incorporated on the date the agreement dated May 9, 1973 was entered into.

22. The recitals in the agreement in clear terms state that the vendor has prepared the layout, made plans to complete the development and thereafter sell the same to the Grewal and another. The price was indicated as Rs.1.40 p. per square feet. The recitals states that at this agreed price, the property will be sold, subject to the terms and conditions set out in the agreement.

23. The agreement then recites the set out terms and conditions and in clause 6 of the agreement, there is a reference to the purchase price being approximately Rs.3,23,200/- and there is a reference to the receipt of earnest money of Rs.5,000/-. This clause provides that the balance consideration is to be paid by the Grewals after the amounts are collected from the members of the society. The clause further provides that Grewals will retain 25% of the amount to be collected from the members of the society and 75% of the amount will be paid to the disputant at the stage of execution of the sale deed.

24. The agreement then provides that the expenses towards

stamp duty shall have to be borne by the Grewals. The agreement also provides that the disputant will facilitate registration of the co-operative society. The agreement also provides that the land has also been measured and demarcation certificate has been obtained. The said demarcation certificate will, however, be transferred to the Grewals as part of the sale transaction.

25. The agreement also records the transaction proposed between the disputant and the original owners of the land in relation to certain portion of the land. There is reference to the disputant transferring the papers under such transaction to the Grewals.

26. The agreement also refers to the access road provided by the disputant at his own expense. The agreement states that use of this access road can be made by the Grewals in their capacity of purchasers. There is also a reference to certain amenities which are to be provided in respect of the property, the flats on payment, etc. There is reference to the assistance which the disputant has assured the Grewals and consequently the society, in relation to the purchase of the property in question.

27. The agreement dated September 22, 1974 relates to the providing water pipeline towards the property as aforesaid. In this agreement, there is a reference to the 62 members of the society contributing towards water pipe line. Clause 6 of the agreement states

that the society will have to pay the amount of Rs.18,600/- to the disputant within the prescribed period and only thereafter, will the pipeline be transferred in the name of Grewals.

28. The parties have also lead evidence before the Co-operative Court. However, in the matter of this nature, since both the parties have relied upon the two agreements, it is important to focus on the said agreements and to determine whether the terms of the said agreement, the disputant was only an agent of the society and, therefore, entitled to maintain the dispute under section 91 of the said Act on account of the claim arising out of the said two agreements with the society.

29. According to me, neither of the agreements make out any case that the disputant was the agent of the society. In the first place, neither of the two agreements refer to the disputant as being the agent of the society. Assuming that the nomenclature is not important, even the various clauses of the agreement do not make out any case of agency even in the most comprehensive terms of the expression.

30. The agreement dated May 9, 1973 very clearly makes out a case that the disputant was the proposed vendor and the Grewals were the proposed purchasers. Although, it is possible to hold that the Grewals were acting as promoters of the proposed society, that by itself does not invest the disputant with the status of the agent of either the promoter or the society. The terms of agreement dated May 9, 1973 are

quite clear in that, the same was actually agreement for sale and not agreement by which the disputant was constituted as agent on behalf of the promoters. The reference to the various clauses of the agreement for sale made above makes this position quite clear and the agreement specifically states that the disputant has agreed to sell the property in question for consideration to the Grewals. The agreement refers to the mode and manner of payment. The agreement also refers to the facilities and amenities which are to be regarded as integral part of the sale transaction. Merely because the disputant has to undertake some works like registration does not mean that the disputant was the agent of the co-operative society qua an agreement dated May 9, 1973.

31. The same is the condition with regard to the agreement September 22, 1974 by which all that the disputant was required to do was to provide amenities of water supply by PWD water pipeline to the property in question which was subject to payment of consideration by the members of the society or the society itself to the disputant. Such an agreement does not invest the disputant with the status of an agent, even if the expression as to be construed in the most comprehensive terms.

32. The decision of *Lakhani Sahakari Shekti Kharedi (supra)* is distinguishable. There the agreement in question had described the disputant as an agent. The agreement had provided that the disputant

has to carry out certain operations as per the scheme framed by the Government. The evidence on record indicated that the society was in fact disentitled to undertake such operations and, therefore, the society had appointed the disputant as its agent in order to undertake such activities. The control as well as supervision for undertaking such activities was specifically reserved by the society to the extent which was necessary and practicable, having regard to the nature of the business. It is in these circumstances that this Court held that the disputant was indeed the agent of the society.

33. The facts in the present case are not all comparable o the facts in *Lakhani Sahakari Shekti Kharedi (supra)*. The Co-operative Court without appreciating this, mechanically followed the said decision by holding that the term '*agent*' as used in section 91 of the said Act was required to be construed in the comprehensive terms. As noted earlier, in the facts of the present case, even if the term '*agent*' is construed in its most comprehensive terms, does not invest the disputant in the present case, with the status of an '*agent*' *qua* the society.

34. Atleast, *prima facie*, it cannot be said that the dispute as raised relates to the business of the society. However, there is no necessity to go into this issue, as even if the dispute relates to the

business of the society, since it was not a dispute between the society and its agent, the same would not be covered under section 91 of the said Act.

35. The issue as to whether this was a case of pre-incorporation of contract and whether the said contract was indeed ratified by the society or not is also not be required to be considered. This is because, even if these issues were to be decided in favour of the disputant, the same would make no difference to the issue of jurisdiction under section 91 of the said Act.

36. Therefore, there is no jurisdictional error involved in the view taken by the Appeal Court. The petition is, therefore, dismissed. There shall be no order as to costs.

37. In case the petitioner does institute appropriate proceedings before an appropriate forum, the petitioner will perhaps be entitled to certain benefits under section 14 of the Limitation Act. This is because, the petitioner was bonafidely pursuing this proceedings in respect of his claim. Besides, the impugned order also permits the petitioner to take back its dispute application for presentation before the appropriate forum. It is made clear that this Court has not adverted to the merits of the claim but only has decided the matter on the issue of jurisdiction.

38. Rule is, therefore, discharged with no order as to costs.

(M.S.SONAK, J.)