

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5059 OF 2019

Jennifer Rebello	...	Petitioner
Vs.		
Wassoodew Co-op. Housing Society	...	Respondent

Ms Sherrie Rebello for Petitioner.

CORAM : UJJAL BHUYAN, J.
DATE : OCTOBER 07, 2019

P.C. :

Heard Ms Sherrie Rebello, learned counsel for the petitioner.

2. She submits that pursuant to order of this Court dated 01.07.2019, she has served the sole respondent by hand and thereafter has filed affidavit. Service is accepted.

3. Challenge made in this Writ Petition is to the legality and validity of order dated 12.07.2018 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai on the appeal filed by the respondent thereby reversing the order dated 13.04.2018 passed by the learned Judge, Co-operative Court No.2, Mumbai in Dispute No.CC/II/52 of 2014.

4. Narration of facts may be briefly stated.

5. On 25.05.2014, petitioner filed the dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (1960 Act hereinafter) in the Co-operative Court No.2, Mumbai which was registered as Dispute No.CC/II/52 of 2014. The dispute was against respondent pertaining to car washing charges levied by respondent on the petitioner.

6. Respondent contested the dispute by contending that it was not maintainable on the ground of no prior notice under Section 164 of the 1960 Act to which, petitioner responded by saying that the aforesaid provision was not attracted.

7. On 12.01.2015, respondent filed an application under Section 9-A of the Code of Civil Procedure, 1908 with the prayer that a preliminary issue be framed relating to jurisdiction of the Co-operative Court to decide the dispute as it was contended that such a dispute was barred by limitation.

8. Petitioner filed her affidavit contending that no notice under Section 164 of 1960 Act was required as the dispute was within the ambit of Section 91 of the 1960 Act. In so far as limitation was concerned, it was contended that it was within the discretion of the Court; besides there being no delay as such.

9. On 11.01.2016, learned Judge, Co-operative Court No.2, Mumbai passed an order framing preliminary issue on the point of limitation but at the same time held that question of issuing notice under Section 164 of the 1960 Act did not arise. Prayer of respondent to lead evidence on preliminary issue regarding jurisdiction and limitation was allowed whereafter petitioner led her evidence.

10. It is the contention of the petitioner that respondent made every endeavour to delay the proceedings. Ultimately, respondent filed another application under Section 9-A of Code of Civil Procedure, 1908 contending that the Co-operative Court had no jurisdiction to entertain and try the dispute on the ground that there was already an on-going proceeding under Section 101 of the aforesaid Act before the Deputy Registrar.

11. This application was rejected by the learned Co-operative Court

vide order dated 13.04.2018.

12. This order dated 13.04.2018 came to be challenged by the respondent before the Maharashtra State Co-operative Appellate Court, Mumbai (Appellate Court) by way of an appeal, which was registered as Appeal No.50 of 2018. By order dated 12.07.2018, the appeal was allowed and order dated 13.04.2018 was set aside.

13. Hence, this Writ Petition.

14. This Court by order dated 01.07.2019 had issued notice and stayed further proceedings before the Co-operative Court.

15. A perusal of the relevant portion of the impugned order dated 12.07.2018 would go to show that the Appellate Court has taken the view that the second application was required to be considered because it had only requested the Co-operative Court to decide the jurisdictional issue. Relevant portion of the order dated 12.07.2018 is extracted hereunder:

“21] I have gone through the order passed by the Ld Trial Court. It appears that the Ld. Trial Court has not taken into consideration the application filed below Exh.32 and its reliefs. The opponent society by filing the said application only requested to decide the issue whether the Co-operative Court has jurisdiction to decide the matter relating to recovery of dues in view of jurisdiction exclusively created under Sec.101 of the MCS Act. But the Ld. Trial Court, instead of framing additional issue, instead of giving opportunity to the parties to lead evidence on that issue, directly decided the said issue and made observations that, the subject matter of the dispute covers withing the purview of Section 91 and the Court has jurisdiction to try and entertain the same. Hence, there is perversity in the order of Trial Court, therefore, interference is required.”

16. From the narration of facts what is seen is that respondent has made a claim of Rs.12,915.00 against the petitioner as car washing charges with interest amount of Rs.9,939.00, which petitioner has

contended to be wholly untenable for the reasons mentioned in her dispute, which is awaiting adjudication by the Co-operative Court. In such a scenario, interference by the Appellate Court by directing the Co-operative Court to proceed in one way or the other is not justified.

17. In my opinion, view taken by the Appellate Court is not at all justified and the Co-operative Court should be left free to decide the issue as it deems fit and proper in accordance with law.

18. In the light of the above, impugned order dated 12.07.2018 is hereby set aside.

19. Since the dispute is of the year 2014, learned Co-operative Court shall hear and decide the same within a period of 2 months from the date of receipt of a certified copy of this order.

20. Writ Petition is allowed in the above terms.

(UJJAL BHUYAN, J.)

Minal Parab