

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3142 OF 2019

Digambarrao s/o Chandrabhan Bhutle

vs.

Shetkari Sahakari Ginning Pressing Wa Krushi Mal Prakriya Sahakari Sanstha
Maryadit and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. P. Dharmadhikari, Senior counsel and Shri. R. K. Joshi,
counsel for petitioner.
Shri. M. V. Samarth, counsel for respondent No.1.

CORAM : MANISH PITALE J.

DATED : 06/02/2020

By this writ petition, the petitioner has challenged order dated 25/02/2019, passed by the Co-operative Appellate Court, whereby an order of temporary injunction granted by the Co-operative Court in favour of the petitioner was interfered with and the appeal filed by the respondent No.1 Society was partly allowed.

2. The petitioner is a member of the respondent No.1 Society. The Society is involved in the activity of Ginning and Pressing, having been set up in the year 1957 for such activities. The petitioner filed a dispute bearing case No.07/2011, before the Co-operative Court, contending that the proposed action of the respondent No.1 Society in undertaking construction of a commercial complex in the premises of the Ginning and Pressing factory of the Society, was not in the interest of the Society

and it was contrary to the main object of the society, apart from being contrary to the bye laws. The petitioner prayed for setting aside the resolution passed by the Society for undertaking construction of the commercial complex. It was further prayed that the then Administrative Committee in charge of the Society be prevented from carrying out the construction of commercial complex. In the said dispute, the petitioner moved an application for temporary injunction, which stood allowed, due to which the Society was temporarily enjoined from undertaking construction of the commercial complex. The said order was never challenged by the respondent No.1 Society.

3. It is not disputed that the respondent No.1 Society had taken loan from a Co-operative Bank and due to the defaults in repayment of the said loan, a proceeding under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was undertaken by the bank, which resulted in sale of property of the respondent No.1 Society. It appears that the said sale was undertaken pursuant to negotiations and one Jay Ambe Developers purchased the property of the respondent No.1 Society. It is also an admitted position that after repayment of the bank loan, substantial amount remained in the hands of the Society.

4. The respondent No.1 Society proposed to purchase 5 acres of land, purportedly with the intention of developing a modern Ginning and Pressing factory. The

balance amount remaining with the respondent No.1 Society after sale of the property was proposed to be utilized for such purchase. The respondent No.1 Society took permission from the Director Marketing for purchase of such 5 acres of land. The petitioner in the meanwhile amended the original dispute to include a prayer challenging the sale of property of respondent No.1 Society to the said Jay Ambe Developers and the said purchaser also added as a party to the dispute. At this stage, the petitioner moved an application for temporary injunction claiming two fold reliefs. Firstly, that the balance amount remaining with the Society after repayment of loan of the bank ought to be deposited in a Nationalized Bank so that it would be secured and secondly, that the respondent No.1 Society be prevented from going ahead with purchasing 5 acres of land. The Co-operative Court considered the necessary ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss. On the basis of material on record, the Co-operative Court came to the conclusion that the petitioner had been able to prove all the three aforesaid ingredients for grant of temporary injunction and accordingly the reliefs sought by the petitioners were granted and the respondent No.1 Society was directed to deposit the balance amount of sale proceeds in a Nationalized Bank and it was temporarily restrained from purchasing any movable or immovable property from such amount till final disposal of the dispute.

5. Aggrieved by the same, the respondent No.1

Society filed an appeal before the Co-operative Appellate Court. As noted above, the appeal was partly allowed and the order of temporary restraintment given by the Co-operative Court to the respondent No.1 Society from disposing movable and immovable property during the pendency of the dispute, was set aside.

6. The present writ petition has been filed challenging the said order passed by the Co-operative Appellate Court.

7. Shri. S. P. Dharmadhikari, learned Senior Counsel appearing for the petitioner submitted that the Co-operative Appellate Court committed a grave error in passing the impugned order as the power of the Court to examine the question as to whether a case for grant of temporary injunction was made out by the petitioner or not, was abdicated despite the fact that the Co-operative Court had found in favour of the petitioner on all the three aforesaid ingredients necessary to be proved for grant of temporary injunction. It was submitted that the Co-operative Appellate Court erroneously proceeded on the basis that since the Director Marketing had granted permission for purchase of 5 acres of land to the respondent No.1 Society, the Co-operative Court could not have interfered with such permission granted to the respondent No.1 Society. The jurisdictional error found by the Co-operative Appellate Court was non-existent, because the grant of permission or otherwise by the Director Marketing had nothing to do with examination of the

entitlement of the petitioner for grant of temporary injunction. It was submitted that there was no statutory provision under the provisions of the Maharashtra Co-operative Societies Act, 1960, for the respondent No.1 Society to obtain permission from the Director Marketing for purchase of movable or immovable property and that in any case such a requirement had not nothing to do with the contentions raised on behalf of the petitioner in the original dispute, as well the application for grant of temporary injunction. On this basis, it was submitted that the impugned order deserved to be set aside and that of the Co-operative Court was required to be restored.

8. On the other hand, Mr. M. V. Samarth, learned counsel appearing on behalf of respondent No.1 Society submitted that the impugned order did not deserve interference, because according to the respondent No.1 Society, the original dispute filed by the petitioner before the Co-operative Court under Section 91 of the said Act itself is not maintainable. According to the learned counsel for the respondent No.1 Society, the District Deputy Registrar had passed an order dated 14/07/2010 granting permission to the respondent No.1 Society for undertaking construction of commercial complex. This order could very well have been challenged by the petitioner by invoking revisional jurisdiction under Section 154 of the aforesaid Act. On this basis, while inviting attention of this Court to proviso to Section 91 of the aforesaid Act, it was emphasized that when such a remedy of invoking revisional jurisdiction was available for the petitioner, the

dispute filed before the Co-operative Court was not maintainable. On this basis it was submitted that when the dispute itself could be demonstrated to be not maintainable, any prayer for temporary injunction restraining the respondent No.1 Society from purchasing movable and immovable property could not be entertained by the two Courts below. It was further submitted that when permission of the Competent Authority even for purchase of land had been obtained from the Director Marketing, the Co-operative Appellate Court was justified in observing that the preventive order passed by the Co-operative Court was not sustainable. It was submitted that the District Deputy Registrar in the present case had passed the order dated 14/07/2010 granting permission to the respondent No.1 Society to undertake construction of commercial complex on the basis of the Government Resolution issued by the State granting such powers to the Registrar. The power of issuance of such Government Resolution was traced by the learned counsel for respondent No.1 Society to Section 79A of the aforesaid Act and on this basis it was submitted that the original dispute itself filed by the petitioner was not maintainable. On this basis, it was submitted that the impugned order did not deserve interference.

9. Heard learned counsel for the rival parties. A perusal of the material on record and the impugned order shows that the limited controversy in the present case between the parties is the direction given by the Co-operative Appellate Court setting aside part of the order of

temporary injunction granted by the Co-operative Court in favour of the petitioner. The order restraining the respondent No.1 Society from purchasing 5 acres of land was set aside by the Co-operative Appellate Court primarily on the ground that when permission of the Competent Authority i.e. Director Marketing had been obtained by the respondent No.1 Society for purchase of said land, the Co-operative Court could not have issued the order of restraintment. A perusal of the order shows that there is no discussion on the three necessary ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss. The order of the Co-operative Court on the other hand shows that these three ingredients were considered and upon discussion of the material on record, the Co-operative Court came to considered conclusion that the petitioner had made out a case for grant of such order of temporarily restraining the respondent No.1 Society from purchasing 5 acres of land, during pendency of the original dispute.

10. This Court is of the opinion that the Co-operative Appellate Court committed an error in refusing to examine the aforesaid ingredients necessary for considering the prayer for grant of temporary injunction and relying completely on the said permission obtained by the respondent No.1 Society from the Director Marketing for purchasing 5 acres of land. The question as to whether such permission of the Director Marketing was statutorily required or not is another matter, but it is evident that with or without such permission, if the Society undertook such a

step for purchase of 5 acres land, which the petitioner could demonstrate to be not in the interest of the Society or not in consonance with its object or bye laws, it was incumbent upon the Co-operative Appellate Court to have considered the question as to whether the Co-operative Court was justified in passing such an order of temporary restraintment on the respondent No.1 Society. Having failed to do so, it is evident that the Co-operative Appellate Court committed an error and only on this short ground, the impugned order deserves to be set aside.

11. As regards the question of jurisdiction and maintainability of the original dispute before the Co-operative Court, this Court refrains from expressing any opinion in the matter, because the original dispute is pending before the Co-operative Court. The contentions raised on behalf of the respondent No.1 Society can be appropriately placed before the Co-operative Court in the original dispute to be dealt with in accordance with law.

12. This Court could have remanded the matter to the Co-operative Appellate Court to consider the question as to whether the Co-operative Court had correctly held in favour of the petitioner in respect of the aforesaid three ingredients relevant for considering the prayer for temporarily restraining the respondent No.1 Society, but, a request was made on behalf of the respondent No.1 Society that instead of remanding the matter to the Co-operative Appellate Court, the original dispute itself could be directed to be disposed of expeditiously, so that the

controversy between the parties could be put to rest.

13. In view of the above, it is found that the impugned order is unsustainable and hence, it is quashed and set aside. The order passed by the Co-operative Court granting the application for temporary injunction in favour of the petitioner is restored.

14. In the interest of justice, the Co-operative Court is directed to take up the original dispute case No.07/2011 for final disposal. The Co-operative Court is directed to make an endeavor to dispose of the dispute as far as possible within a period of three months from today and in any case within a period of six months from today.

15. Needless to say, all questions including the question of maintainability of the dispute and jurisdiction are kept open. The parties would be at liberty to raise such contentions as are available to them before the Co-operative court at the stage of final disposal of the original dispute.

16. Writ petition is disposed of in above terms. No order as to costs.

JUDGE