

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 96 OF 2022

Shree Datta Shetkari Sahakari
Sakhar Karkhana Ltd. & Ors.

...Applicants

Versus

Dastagir Ramjan Bandar & Ors.

...Respondents

Mr. V. B. Rajure, for the Applicants.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 03rd AUGUST, 2023.

P.C.:

1. Heard.
2. The challenge in the application is to the order dated 22nd December, 2021 rejecting the Applicants' application filed under Order 7 Rule 11 of the Code of Civil Procedure.
3. Regular Civil Suit No. 100 of 2020 was instituted by the Respondents seeing mandatory injunction restraining the Applicants from carrying out any construction as per the tender notice, without obtaining permission of defendant No. 4- Municipal

Council. An application came to be filed by the present Applicants seeking rejection of the plaint on the ground of Section 115 of Multi-State Co-operative Societies Act, 2002 contending that as the notice contemplated under Section 115 of Multi-State Co-operative Societies Act, 2002 is not given, the suit is barred. The trial Court by the impugned order rejected the application by observing that the subject matter of the proceedings was the work of construction of cane carrier and as such does not touch the business of the Society.

4. Mr. Rajure, learned Counsel appearing for the Applicants submits that admittedly Respondent No. 1 is a member of the Applicant No. 1- Sakhar Karkhana and the tender which was issued for construction of the cane carrier was to be utilized for the business of the Karkhana. He would contend that the provisions of Section 115 would bar the institution of the suit in the absence of the mandatory notice of 90 days. He would further contend that the trial Court while rejecting the application has taken into consideration the written statement of the Applicants which is not mandated in an application under Order 7 Rule 11 of the C.P.C.. He also raises an objection as to the findings of the trial Court that when any business of the society does not require interference,

permission, accord etc. of any independent authority or government machinery, then only it can be said as business of the society, and not otherwise.

5. Considered the submissions.

6. The suit in question has been instituted seeking the mandatory injunction not to carry out any construction without obtaining the necessary permission of the Municipal Council. The application under Order 7 Rule 11 of the C.P.C. based its foundation on the provisions of Section 115 of Multi-State Co-operative Societies Act, 2002, which reads as under:

Section 115 - Notice necessary in suits.

No suit shall be instituted against a multi-state co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been delivered to the Central Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

7. Perusal of the above provision would indicate that there is a bar to a suit being instituted until the expiration of 90 days next after notice in writing has been delivered to the Central Registrar

stating the cause of action and the relief claimed and the plaint shall contain a statement that such notice has been delivered or left. It is trite that such notice is required to be given in respect of any act touching the constitution, management or the business of the Society. Considering the averments in the plaint, the plaintiff has come with the case that without obtaining any permission of the Municipal Council, the work which was under the tender is sought to be commenced. The work of construction of the cane carrier, in my view, cannot be considered as a matter touching the constitution, management or business of the Society. The business of the society is to purchase the sugarcane from its members and produce the sugar from it. The construction of the cane carrier for the purpose of crushing of the sugarcane cannot be construed as an act touching the business of the Society.

8. The observation of the trial Court is that when permission of any independent authority is necessary for the work undertaken by the society then such affair cannot be confined as internal affair of the multi-state society is too general an observation, particularly in view of the fact that in case of the society which requires permission from the government for carrying on their business, in such event all the acts for which permission is required from the

government would be construed as an act not touching the business of the Society.

9. In view of the above, there is no infirmity in the order rejecting the application, however, the Civil Revision Application is allowed by setting aside the observation made in paragraph 11 of the impugned order that “when permission of some independent authority is necessary for any work to be undertaken by defendant Nos. 1 to 3, then such affair cannot be confined as internal affair of a multi-state society. In my considered view, when any business of the society does not require interference, permission, accord agreed etc. of any independent authority or government machinery, then only it can be said as business of the society, and not otherwise”.

10. Civil Revision Application stands disposed of in the above terms.

(SHARMILA U. DESHMUKH J.)