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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 29.03.2023

M/s Royal Green Owners Condominium Association ...Petitioner

Versus

Ritu Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arpandeeep Narula, Advocate and
Mr. M.J.S. Bedi, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 09.03.2023 (Annexure P-5), whereby the application moved by petitioner, under Order VII Rule 11 CPC for rejection of plaint, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondents No.1 to 6 are residents of Crescent Parc, Royal Greens Condominium, Sector 92, Wazirpur, Gurugram. Petitioner being President of M/s Royal Green Owners Association has, with the consent of members, appointed respondent No.7 i.e. maintenance company for maintenance of M/s Royal Green complex. Thereafter, petitioner called a meeting of the Association and for the welfare of Association and with the consent of its members and on the demand of respondent No.7-maintenance company increased the maintenance charges. From the entire Welfare Association, respondents No.1 to 6 have raised objections with regard to increasing of maintenance charges. Due to the said increasing of maintenance charges, respondents No.1 to 6 became furious and they filed a suit for declaration with permanent and mandatory injunction and rendition of true accounts of the maintenance. In the suit, said respondents have also levelled

allegations against petitioner regarding threat for disconnection of their electricity bill.

2.2. Upon notice, petitioner appeared and filed an application under Order VII Rule 11 CPC stating that suit is not maintainable since jurisdiction of civil court is expressly barred under Section 89 of Haryana Registration and Regulations of Society Act, 2012 (*hereinafter referred to as 'Act of 2012'*). Respondents No.1 to 6 filed reply to the application. However, vide impugned order the said application was dismissed by Ld. Trial Court, the relevant part of which is reproduced herein below:-

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9. Thus, after having heard the arguments advanced by Ld, counsel for both the parties and after having gone through the contents of the plaint and the case laws relied upon by Ld. counsel for both the parties, this court is of the considered view that the plaintiffs have sought the remedy of injunction against defendant No. 1 who happens to be president of RWA. This court is of the considered view that there are specific allegations of violation of mandatory provisions of Haryana Registration and Regulations of Society Act 2012. Hon'ble Supreme Court of India has categorically held that in landmark judgment rendered in **Dhula Bhai and Ors Versus the State of Madhya Pradesh & Ors. 1968 (3) SCR 662 SC** wherein it was held that where the statutes gives a finality to the orders of the special tribunals, the Civil Court, jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provisions, however, does not exclude those cases where the provision of particular Act have not been complied with or the statute tribunals has not acted in conformity with the fundamental principles of judicial procedure.

10. The same legal preposition has been reiterated by the Hon'ble Supreme Court of India in latest case law reported as **South Delhi Municipal Corporation and another Versus M/s Today Homes and Infrastructure Pvt Ltd 2019 (3) PLR 785 SC** wherein Hon'ble Supreme Court has held that Jurisdiction of Civil court cannot be completely taken away in spite of express or implied bar. Civil court shall have jurisdiction to examine matter in which there is allegation of non-compliance of provisions of statute or any fundamental principle of judicial procedure.

11. It is also settled preposition of law that at the time of deciding application moved under Order VII Rule 11 of CPC no other

*document can be looked into by the court except the averments made in the plaint only. In this regard reliance can also be placed on a case law reported as **Chhotaben and another Vs. Kirti Bhai Jaikrishan Bhai Thakur and another 2018 (5) RCR 5 163 SC (Full Bench)** "wherein the Hon'ble Supreme court has held that inapplication under Order 7 Rule 11 CPC the court is to examine the averments made in the plaint only and plaint is required to be read as a whole, defence available to defendant or the plea taken by the defendant in written statement or any other application filed by them, cannot be the basis to decide application under Order 7 Rule 11."*

*12. Otherwise also, this injunction sought by plaintiff cannot be granted by Registrar of Societies as was held by Hon'ble High Court in a case reported as **Chatter Singh Vs.Prithvi Singh, 2019 (4) CCC 394** holding that Rejection of plaint - Injunction suit restraining defendants from disconnecting electricity and water supply - Contention that suit is barred as plaintiff had an efficacious remedy of appearing before concerned authority-Contention rejected as apart from fact that relief of injunction cannot be granted by any other authority except court, even injunction of disconnection of electricity and water connection cannot be granted by concerned authority-Fact that plaintiff can file reply to notices issued to him and satisfy the authorities cannot be construed or considered as remedy much less efficacious statutory remedy- Application rightly dismissed.*

13. Therefore, I do agree with the submissions of learned counsel for the plaintiff that at this stage, the plaintiff has made allegations of the non-compliance of provisions of this Act itself by not getting the enhanced rates of maintenance ratified from members of the general body.

14. Therefore, the only ground taken by the applicant/ defendant that jurisdiction is barred does not appear to be tenable in the eyes of law at this stage, in view of the allegations made in the plaint and in view of the law laid down in case laws relied upon by plaintiff. Therefore, the aforesaid application is dismissed being without merits."

3. Apart from the reasons given by Ld. Court below, as reproduced above, I am of the view that reliance placed on Section 89 of Act of 2012 by learned counsel for petitioner is totally untenable as the section itself makes it amply clear that no Court's jurisdiction to entertain or proceed in a suit is excluded only in cases which are required to be inquired/ settled by Authority under the Act of 2012. The cases to be inquired/ settled by the Authority under the Act of 2012 have to be necessarily as per Sections 52 to 55 of the Act of 2012. For ready reference, the said sections are reproduced herein below:

“52. Powers to call for information or explanation. –

(1) The Registrar General, Registrar or District Registrar may, by written order, require any Society to furnish in writing such information or document or explanation as prescribed in the order within such time, not being less than two weeks from the date of receipt of such order.

(2) On receipt of the order, it shall be the duty of the Society to furnish such information or documents or explanation.

53. Powers to seize records etc. –

(1) Where the Registrar General, Registrar or District Registrar is satisfied that-

(i) the records, registers or the books of accounts are likely to be tampered with or destroyed and the funds and the property are likely to be misappropriated or misapplied; or

(ii) the Governing Body is reconstituted at a general meeting and the outgoing members of the Governing Body refused, to hand-over charge of the records and property of the Society to those entitled to receive such charge; or

(iii) the office bearer, where the elections of the Governing Body have not been held by the due date, are likely to misuse such documents, funds, records or are reluctant to hand over the records to an adhoc Committee or the Administrator appointed for managing the affairs of the Society as an interim measure, he may issue an order directing a person duly authorized by him in writing to seize and take possession of such document, funds, records and property whereupon the office bearer responsible for custody of such documents, record, funds and property shall give delivery thereof to the person so authorized.

(2) In order to secure compliance of the order under sub-section (1), the District Registrar may take or cause to be taken such steps and use or cause to be used such minimum force, including police force, as may be considered necessary.

54. Power to inquire. - *(1) Where on the information received or gathered under section 52 or on the application of a majority of the office bearers or on the application of not less than one-third of the members of the General Body or Collegium, as the case may be, or, if so moved by the District Collector or the State Government, the Registrar General, Registrar or District registrar is of opinion that there is apprehension that the affairs of a Society are being so conducted as to defeat the aims and objects of the Society or its Governing Body is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations or to defraud its creditors, he may, either himself or by any person authorized by him in that behalf, hold an inquiry into the affairs of the Society.*

(2) An application or reference to the Registrar General, Registrar or District Registrar under sub-section (1) shall be supported by such evidence, as he may require for the purpose of showing that the applicant has good reason for applying for an inquiry.

(3) The District Registrar may require the applicants to furnish such security as he thinks fit as the cost of the proposed inquiry, before the inquiry is ordered.

(4) All expenses incidental or preliminary to the inquiry shall, where such inquiry is held,

(a) on application, be defrayed by the applicants thereof or out of the assets of the Society or by the members of the Society, in such proportion as the District Registrar may, by order in writing direct; and

(b) on a reference from the District Collector or the Government or the District Registrars, own motion, be defrayed out of the assets of the Society and shall be recoverable as arrears of land revenue.

(5) A person holding an inquiry shall have, at all reasonable times, free access to all the documents and shall have power to call upon any office bearer or officer to produce any of the document, as he may direct.

(6) It shall be the duty of all office bearers or officers, who were or are holding office, to furnish the Inquiry Officer with all the information or document in their possession.

(7) A person holding an inquiry may summon and examine any person on oath who, he has reason to believe, has knowledge of any affairs of the Society and may summon any person to produce any books of accounts or documents belonging to him or in his custody, if the person holding the inquiry has reason to believe that such books of accounts or documents contain any entries relating to transactions of the Society.

(8) A person holding an inquiry may, if in his opinion it is necessary for the purpose of inquiry, seize any or all the documents:

Provided that any person from whose custody such documents are seized shall be entitled to a receipt thereof and make copies thereof.

(9) If the inquiry is held by a person other than the District Registrar then he shall send the report to the District Registrar and the District Registrar shall make a report to the Registrar alongwith his recommendations. If the inquiry is held by the District Registrar himself, he shall forward the report to the Registrar along with his recommendations.

(10) The inquiry report shall be communicated to the Society and the applicants, if any.

55. Action on Inquiry report. - *The Registrar shall consider the inquiry report alongwith the recommendations of the District Registrar, if any, and take any of the following steps,*

(i) where no irregularities, whatsoever, of procedural or material nature, are found to have been committed by the Governing Body, he shall order closure of the inquiry alongwith information thereof to the Society and complainants, if any; or

(ii) where the irregularities or violations committed by the Society are found to be of procedural nature, which are rectifiable, he shall direct the Society to take recourse to such corrective measures within such time, as he may direct:

Provided that where a Society fails to carry out the directions, the Registrar shall forward the matter to the Registrar General alongwith his recommendations for appropriate action against the Society; or

(iii) where the irregularities or violations committed by the Society are found to be of a serious or material nature (e.g., relating to memberships, financial mis-management or financial irregularities or fraud or subversion of the objects of the Society), the Registrar shall forward the matter to the Registrar General alongwith his recommendations for appropriate action against the Society; or

(iv) pass any other appropriate order to meet the ends of justice.”

4. Perusal of the aforesaid, leaves no manner of doubt, whatsoever, that the jurisdiction of the civil court is excluded only in those specified cases which are required to be inquired/settled by the Authority under the statutory provisions of the 2012 Act, *ibid*.

5. Learned trial noted, and rightly so, that the plaintiffs have alleged in their plaint against the petitioner for non-compliance of the provisions of the Haryana Registration and Regulation of Societies Act, 2012 by not getting the enhancement of rates of maintenance ratified from the general body of the members of the Association. It also opined that the relief of injunction sought by the plaintiffs cannot be granted by the Authority under the 2012 Act. To my mind also, the learned trial Court correctly held that its jurisdiction to entertain

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and try the suit was not barred by the Act, and therefore dismissed the petitioner’s application under Order 7 Rule 11 CPC.

6. No material irregularity in law or procedure has been committed by Ld. Court below while passing the impugned order calling for interference in exercise of extraordinary revisional jurisdiction.

7. In view of the aforesaid, nothing survives for adjudication before this Court. Revision petition is dismissed being devoid of merit.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 29, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No