



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 SECOND APPEAL NO. 589 OF 2011
with CIVIL APPLICATION NO. 13557 OF 2011

**THE MANAGING DIRECTOR SHRI VRIDDHESHWAR SAHAKARI SAKHAR
KARKHANA LTD ADINATHNAGAR AHMEDNAGAR AND ANR
VERSUS
RAMBHAU GOVIND VETAL AND ANR**

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Advocate for Appellant : Mr. Rajale Gulab
Advocate for Respondents : Mr. Nangare Prashant R.
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CORAM : Y. G. KHOBRAGADE, J.
DATE : 27.03.2024

P. C.:-

1. By the present appeal under Section 100 of Code of Civil Procedure, the appellants take exception to the judgment and decree dated 29.01.2011 passed by the learned District Judge-2, Ahmednagar, in First Appeal bearing R. C. A. No. 157/2004 arising out of Judgment and Decree dated 20.04.2004 passed by the learned C. J. J. D., Pathardi, Dist. Ahmednagar, in suit bearing R.C.S. No. 25/2003.

2. Present appellants are the original defendants and the present respondents are the original plaintiffs in suit bearing R.C.S. No. 25/2003. For the sake of brevity, I would like to refer the parties to the present appeal in their original capacity as Plaintiffs and Defendants. The respondents/plaintiffs

had filed the suit bearing R.C.S. No.25/2003 and thereby prayed for decree of perpetual injunction restraining the defendants from disturbing their possession over the suit land as well as by way of mandatory injunction they had prayed for removal of fencing wire from the western side of the suit property.

3. In nutshell, it is the case of the plaintiffs that, land bearing Gut No.109 ad-measuring 3.65 H belongs to Vrideshwar Co-operative Sugar Factory and appellant No. 1 is Managing Director and the appellant No. 2 is the Chairman. According to the plaintiffs they obtained lease of open plot admeasuring 20 x 20 ft and 20 x 13 ft respectively out of Gut No.109 from the said Co-operative Sugar Factory. The lease agreement was executed between the plaintiffs and said sugar factory on 19.09.1982. Since then plaintiff Nos. 1 and 2 have been running their hotel and grocery shop respectively on the suit property. According to the plaintiffs, they are paying rent and necessary electricity charges regularly. The plaintiffs claimed that initially they constructed temporary shop, however, on 05.12.1983 they applied to said sugar factory for grant of permission to construct some permanent structure over the suit property. Accordingly, the sugar factory granted permission to raise the construction and run the business over the suit premises. However, in the year 1982, the elections for Directors of sugar

factory were held in which the existing Members of the Board of Directors were defeated and new Board of Directors were elected. Thereafter, newly elected Directors started harassing them on trifle issues. So also, the board of directors filed the suit bearing R.C.S. No.134/1986 against them, however, said suit was dismissed on 20.08.1999. Being aggrieved by said judgment and decree, the sugar factory preferred an appeal bearing R. C. A. No.289/1999 before the first Appellate Court, however, said appeal was also dismissed. Thereafter, the defendants with the help of their employees started harassing the plaintiffs. Lastly, on 21.01.2003 the employees and workers of sugar factory along with security personnel visited the suit premises and pulled down Tin shed which was erected towards the western side of the property and erected the wire fencing there and further constructed wall compound from eastern side of the suit property. Though, the plaintiffs tried to convince the defendants and their workers, but they did not pay any heed and threatened the plaintiffs and pulled down their construction. Therefore report has been lodged with the concerned police station. Therefore, the plaintiffs have filed suit and thereby prayed for decree of injunction restraining the defendants, their servants, agents from interfering with the possession of the suit premises, so also, mandatory injunction praying for removal of fencing wire from western side of the suit property.

4. The defendants resisted suit of the plaintiffs by filing written statement at Exh.12. The defendants have not denied about the execution of agreement of lease/rent between them. According to the defendants, an amount of Rs.9440/- is due against the plaintiffs towards rent and amount of Rs.6136/- towards electricity charges against the plaintiff no.1. Similarly, an amount of Rs.23,600/- is due against the plaintiff no.2 towards rental charges, Rs.1600/- towards electricity charges and an amount of Rs.10,620/- towards damages caused on the the portion of encroached area. The defendants denied about the obstruction in respect of peaceful possession of the plaintiffs over the suit property. According to the defendants they dug foundation to erect the compound wall. So also, the defendants are office bearers of Co-operative society and for want of Notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 the suit is not maintainable against them, hence prayed for dismissal of the suit.

5. On the basis of rival pleadings of both the sides, the learned Trial Court framed appropriate Issues. In order to prove the claim the plaintiffs examined they examined PW1-Bhausahab at Exh.35, PW-2 Namdeo at Exh.44, PW3-Bharat Kute, photographer at Exh.45 besides oral evidence the plaintiffs proved documentary evidence i.e. certified copy of judgment in suit bearing R.C.S. No. 134/86 at Exh.36, certified copy of judgment in appeal bearing

R.C.A. No.289/1999 at Exh.37, copy of decree at Exh.38, police complaint at Exh.39, notice at Exh.40 etc. The defendants examined DW1-Bhaskar at Exh.61 and proved resolution of Board of Directors at Exh.62, application at Exh.63, agreement between the defendants and plaintiffs at Exh.64 and bye laws of said sugar factory at Exh.68.

6. On 20.04.2004, learned trial Court passed the judgment and decree holding that the plaintiffs are in possession of suit property by virtue of agreement of rent / lease. The plaintiffs are in possession of the suit property and the defendants admitted the said fact. The possession of the plaintiffs over the suit property is lawful and they have right to defend aggression and the plaintiffs cannot be evicted without following the due process of law. So also, the defendants through its servants removed the shed erected by plaintiffs on the suit property towards eastern side and erected wire fencing there, so also, from eastern side of the suit property markings were made by putting lime powder for construction of the compound wall and further threatened the plaintiffs. Therefore, considering the forcible activity on part of the defendants through their servants, agents the learned trial Court passed the decree in favour of the plaintiffs and restrained the defendants, their servants, agents from disturbing possession of the plaintiffs over the suit property without following the due process of law, however, rejected the decree and mandatory

injunction for removal of wire fencing. Being aggrieved by said judgment and decree the appellant defendants preferred an appeal bearing R.C.A. No.157/2004 before the First Appellate Court, however, on 29.01.2011 the learned First Appellate Court upheld the findings of the trial Court and dismissed the appeal of the appellant-defendants.

7. The learned counsel appearing for the appellants canvassed that the Vrudheshar Co-operative Sugar Factory is a registered society governed under the provisions of the Maharashtra Co-operative Societies Act, therefore prior to filing of any suit it is necessary to serve mandatory notice under Section 164 of the Maharashtra Co-operative Societies Act, however, the plaintiffs have failed to issue such notice as contemplated under Section 164 of the Act. Therefore, suit of the respondent/plaintiffs needs to be dismissed for want of service of mandatory notice under Section 164 of the Act. However, both the learned courts below erred while passing the impugned judgment and decree, hence, prayed for quashing and setting aside the same.

8. It is further canvassed that, the appellant/defendants led substantial evidence that the defendant-sugar factory is the owner of the suit property, which has been given to respondent/plaintiffs on lease/rent under agreement dated 19.09.1982 for running business. Therefore, as per terms and conditions of the Lease Agreement the transaction between the Co-

operative sugar factory and the respondent-plaintiffs certainly touching business of the society, therefore, notice as contemplated under Section 164 of the Act is mandatory. However, both the learned Courts below failed to considered the legal provisions and passed the impugned judgment and decree which are not sustainable in the eyes of law.

9. Per contra, learned counsel appearing for the respondents supported the findings recorded by both the learned Courts below and vehemently canvassed that, the co-operative sugar factory is the owner of the suit land and the plaintiff respondents are tenants. The plaintiffs does not posses any share of the landlord Sugar Factory, nor they are members, so also, there is no business transaction between them and the Sugar Factor. Moreover, the respondent/plaintiffs are paying rent in pursuance of lease agreement dated 19.09.1982. Therefore, relation between the plaintiffs and defendants being of landlord and tenant which does not touch the business of the co-operative sugar factory. Therefore, for filing of any legal proceedings before the Civil Court, notice under Section 164 of the Maharashtra Co-operative Societies Act is not mandatory. Both the learned Courts below passed the impugned judgment and decree and concurrently held that no notice u/s 164 of the act is required and restrained the defendants (present appellants) from interfering with their possession over the suit property.

Therefore, no any substantial grounds are set out in the appeal, hence prayed for dismissal of the appeal.

10. Needless to say that the claim of the plaintiffs for perpetual injunction as well as mandatory injunction is based on Lease/Rent Agreement dated 19-09-1982. It is an admitted fact that the Vriddheshwar Sahakari Sakhar Karkhana is the owner of the land bearing Gut No.109 ad-measuring 3.65 H. The plaintiffs have obtained lease of open plot admeasuring 20 x 20 ft and 20 x 13 ft respectively out of Gut No.109 from the said Co-operative Sugar Factory and since then they have been running their hotel and grocery shop in the suit premises. It is not in dispute that the plaintiffs are paying rent and electricity charges. It is case of the plaintiffs that initially they constructed temporary structure, but subsequently, they raised some permanent structure with due permission from earlier body of the Sakhar Karkhana and running business over the suit premises. The defendants have not claimed that the plaintiffs are members of the co-operative sugar factory or the plaintiffs possess any share of the said sugar factory.

11. Section 91 of the Maharashtra Cooperative Societies Act provides as under:

“91. Disputes

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution,

[elections of the committee or its officers [* *], 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, 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 [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 [or de-registered society or the official Assignee of such a de-registered society].

Provided that, an industrial dispute as defined 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 [* *] or refusal of admission to membership by a society to any person qualified therefor [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 subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, [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.]

(3) Save as otherwise provided under [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 [or an official Assignee of a de-registered society] and [the members (including past members, or nominees, heirs or legal representative or deceased members) of the same society shall not be referred [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.”

12. Needless to say that, Section 164 of the Maharashtra Co-operative Societies Act provides that no suit shall be instituted against the society or any of its officers in respect of any act touching business of society unless the expiration of two months next after notice in writing has been delivered to the registrar or left at its office, stating the cause of action, the name, description and place of residence of the plaintiffs, the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.

13. In the case of **Deccan Merchants Co-operative Bank Ltd. V/s. M/s. Dalichand Jugraj Jain and Ors.**; AIR 1969 S. C. 1320, Hon'ble Supreme Court has considered the word “touching to the business” used in Sec. 91 of the Maharashtra Co-operative Societies Act and observed in Para Nos. 17 and 18 as under:

17. The answer depends on the words used in the Act. Although number of cases have been cited to us on similar expressions contained in various other Acts, both Indian and English, in the first instance, it is advisable to restrict the enquiry to the terms of the enactment itself, because the legislatures have been changing the words and expanding the scope of references to arbitrators or to the Registrars step by step. The sentence, namely, "notwithstanding anything contained in any other law for the time being in force"

clearly ousts the jurisdiction of Civil Courts if the dispute falls squarely within the ambit of Section 91 (1). Five kinds of disputes are mentioned in sub-sec. (1), first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society, thirdly, disputes touching the conduct of general meetings of a society, fourthly, disputes touching the management of a society, and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws.

18. The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require, for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank, and the appeal should fail on this short ground."

14. Since, the plaintiffs are not member of the Sakhar Karkhana and they are not having business with the said Karkhana so also, the plaintiffs are not concerned with business of the said society. Moreover, the defendants-sugar factory admitted about execution of lease/rent Agreement and raised

dispute about arrears of rent and electricity charges, damages to the extent of portion of encroached area by the plaintiffs. Therefore, possession of the plaintiffs over the suit premises cannot be said to be illegal and the plaintiff are legally in possession of suit premises. So also, the Defendants having no right to interfere with possession of the plaintiffs. Moreover, the plaintiffs who are in possession being the tenants/lessee cannot be evicted without following the due process of law. The plaintiffs have substantially proved that, on 21.01.2003, the defendants through their servants, agents tried to remove shed/structure of the plaintiffs and fixed fencing wire which amounts to interfering with possession of the plaintiffs. Therefore, the learned trial Court passed the decree of perpetual injunction and restrained the defendants, its servant, agent, from causing obstruction to peaceful possession of the plaintiffs over the suit property and further it was also affirmed by the learned First Appellate Court. The findings recorded by both the learned Courts below are based on oral and documentary evidence and no perversity has been found in the same. Therefore, I do not find any substantial question of law is involved in the present appeal. In view of above discussion **present appeal is dismissed**. Pending civil application, if any, also stands disposed off. No order as to the cost.

[Y. G. KHOBRADE, J.]