

Nikita

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

WRIT PETITION NO.1151 OF 2024

Professor Gurdial Singh Sokhi and Ors. ... Petitioners

V/s.

Neel Shantiniketan Cooperative Housing
Society Ltd. ... Respondent

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Mr. Amardev Uniyal for the Petitioners.

Mr. Aditya Lele for Respondent No.7.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2024

P.C.:

1. The petitioners are disputants in a dispute filed under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (the Act). The petitioners sought inter alia following relief:

“b) That this Hon’ble Court be pleased to pass an order of permanent injunction directing the Society and its office bearers to refrain from, any manner using words, phrases or remarks conveying opinions, innuendos and demeaning terms in the minutes of the meetings of the Opponent Society to delete all the words, phrases and remarks such as “dissenting members”, “masterminds”, “uneducated dissenting members”, “uneducated bunch of dissenting members”, “ he should get a basic class on account”, “Mr. Sokhi is working with expired knowledge” and other such words, phrases and remarks in the various correspondences and minutes of the meetings of the Opponent Society.”

2. The respondent filed an application under Order 7 Rule 11 clause (d) of Code of Civil Procedure, 1908. The Cooperative Court by order dated 18th January 2023 dismissed the dispute on the ground that the dispute is barred under Section 93(2) of the Act.
3. The petitioners has challenged the order before the Cooperative Appellate Court. The Cooperative Appellate Court by the impugned judgment and order confirmed the order of Cooperative Court by referring to prayer clause (b) in paragraph No.15 in its judgment.
4. Though the Cooperative Appellate Court has referred to prayer clause (b), no reasons are assigned by the Cooperative Appellate Court as to why prayer clause (b) cannot be adjudicated by the Cooperative Court in exercise of power under Section 91 of the Act, particularly when it is undisputed fact that petitioners are members of the Cooperative Society and Respondent is Cooperative Society.
5. On careful reading of the orders passed by Cooperative Court and Appellate Court, it appears that the Courts below have relied on Section 93 (2) of the Act which according to the courts operate as a bar for entertaining dispute between the members and Cooperative Society. Section 93 (2), reads as under:

“ (2) Notwithstanding anything contained in this Act, the Co-operative Court, on an application made to it by any of the parties of the dispute, may, if it thinks fit, suspend any proceedings in respect of any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated question of law and

fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted in a Civil Court within two months from the date of the order of the Co-operative Court, that Court shall continue the proceedings and decide the dispute.”

6. On careful reading of Section 93(2), it appears that sub-section (2) confers power on the Cooperative Court on an application made by party to the dispute to suspend any proceeding in respect of any dispute if i) the question and issue between the Society; ii) the claimant or between different claimant. First one involved mixed question of law and fact.

7. In the context of the facts involved, in my opinion, in so far as the prayer clause (b) is concerned, the petitioners were enforcing their right as a members in relation to the meetings of the Society. Whether, the petitioners are entitled to the relief on merits or cannot be the question under Order 7 Rule 11, of the Code of Civil Procedure, 1908. Clause (d) of the Order 7 Rule 11 of the Code of Civil procedure, 1908 operates when the provision of statute bars institution of proceeding. On careful perusal of sub-section (2), it nowhere prohibits institution of proceedings in relation to prayer clause (b) sought by the members of the Cooperative Societies against the Society. Even if, it involves complicated questions of law and fact, at the most, sub-section (2) empowers Cooperative Court to suspend the proceedings in dispute till the parties to the dispute get their rights adjudicated before the Civil Court. However, sub-section (2) of Section 93 can no way be interpreted as bar created under a statute for institution of proceedings by a member against Cooperative Society touching

the business of Society.

8. It is well settled that part plaint cannot be rejected Order 7 Rule 11 of the Code of Civil Procedure, 1908. Therefore, even if, prayer clause (b) survives, it was duty of the Cooperative Court to decide the dispute on merits. Hence the following order:

9. Rule is made absolute in terms of prayer clause (a).

10. It is clarified that the Cooperative Court shall decide the entire dispute on merits.

(AMIT BORKAR, J.)