

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.67 OF 2025**

Executive Director / Managing Director,
Shree Tatyasaheb Kore Warana
Sahakari Sakhar Karkhana Ltd.

... Applicant

versus

Shri Nikhil Services
through its partners
Yogesh Dattatray Gandhi and Anr.

... Respondents

Mr. Nitin Gaware Patil with Mr. Jay Salunke, for Applicant.

CORAM: N.J.JAMADAR, J.

DATE : 3 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Revision Application is to an order dated 16 August 2024 passed by the learned Civil Judge, Jaysingpur, whereby the application preferred by the Applicant – Defendant for rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, came to be rejected.
3. The Respondents instituted a suit for recovery of a sum of Rs.14,20,790/- along with interest 18% p.a., for the unpaid price of the spare parts supplied and maintenance services provided by them to the Defendant, a co-operative Sugar factory. The Plaintiffs are engaged in the business of sale of air-condition and refrigeration, equipments and maintenance.

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Pursuant to the purchase order placed by the Defendant, the Plaintiffs had supplied spare parts and rendered maintenance services. Alleging that there was default in payment, the Plaintiffs instituted the suit. In the plaint, it was explicitly asserted that, though the Defendant is a Society registered under the Maharashtra Co-op. Societies Act, 1960, yet the Plaintiffs were not the members of the society and the transaction was not touching the business of the society, and, therefore, pre-suit notice envisaged under Section 164 of the Act, 1960, was not required to be served.

4. The Defendant appeared and resisted the suit by filing the written statement. In addition, an application for rejection of the plaint was filed on the count of the bar to the suit under Section 164 of the Act, 1960, and limitation. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that the transaction in question does not touch the business of the Defendant's Society, and, therefore, pre-suit notice envisaged by Section 164 of the Act, was not required to be served. With regard to the alleged bar of limitation, it was held that the limitation being a mixed question of law and facts, the plaint cannot be rejected at the threshold.

5. Mr. Patil, learned Counsel for the Applicant, submitted that the learned Civil Judge did not properly appreciate the nature of the bar to the suit under Section 164 of the Act, 1960. It was submitted that the word 'touching

business of the society' is of wide amplitude and includes any matter which relates to or concerned with the business of a society. Thus, the spare parts supplied for the air-condition system at the factory of the Defendant formed part of the transaction in relation to the business of the Society.

6. Mr. Patil would further urge that the establishment of the factory for large scale production of sugar and by-products is one of the objective of the society under the by-laws. To buttress the aforesaid submissions, Mr. Patil placed reliance on the Full Bench judgment of this Court in the case of Farkhundali Nannhay V/s. V.B.Potdar¹ and the decision of the Supreme Court in the case of Deccan Merchants Cooperative Bank Ltd. V/s. Dalichand Jugraj Jain and Ors.². Reliance was also placed on a judgment of the learned Single Judge of this Court in the case of Suprabhat Co-op. Hsg.Soc. Ltd. and Anr. V/s. Span Builders and Anr.³.

7. I have perused the aforesaid judgments. In the case of Deccan Merchants Cooperative Bank Ltd. (supra), the Supreme Court while partly agreeing with the full bench judgment in the case of Farkhundali Nannhay (supra), observed that though the Supreme Court agreed with the proposition that the nature of business which the Society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of

1 AIR 1962 Bom 162

2 1968 SCC Online SC 10

3 2002 SCC Online Bom 314

carrying out its objects can be said to be part of its business. The Supreme Court, however, agreed that the word “touching” is very wide and would include any matter which relates to or concerns the business of a society. The Supreme Court was doubtful whether the word “affects” should also be used in defining the scope of the word ‘touching’.

8. In the case of Suprabhat Co-op. Hsg. Soc.Ltd. (supra), this Court enunciated that the construction contract which was entered into with the respondents was clearly in pursuance of the basic object of the applicants. The contractual relationship which was entered into between the applicants and respondents was thus in furtherance of and towards implementing the basic object of the applicants as a tenant Co-partnership housing society. The dispute which had arisen between the parties is in the performance of the contract which was thus entered into.

9. The aforesaid pronouncements, in my considered view, do not govern the facts of the case at hand. To produce sugar is the primary object of the Defendant Society which runs the sugar factory. Any transaction in relation to the said activity like, procurement and transportation of sugarcane, purchase of sugarcane, sale of sugar and by products may be said to be touching the business of society. However, purely commercial transaction of the supply of spare parts to run the air condition equipments of the society may not fall within the ambit of the term ‘touching the business of the society’. The

transaction in question is too remote in degree to fall within the ambit of expression of 'touching the business of the society' which is ordinarily construed to be actual trading or commercial or equivalent business activity of the society.

10. In any event, this Court finds that the trial Court has settled the issues, including the the issue of bar to the suit on account of want of notice under Section 164 of the Act, 1960. The Plaintiffs have led evidence and have also been cross-examined. Thus, the issue can be finally adjudicated at the trial. Therefore, the learned Civil Judge cannot be said to have committed any error in rejecting the application for rejection of the plaint. The Revision Application, therefore, does not deserve to be entertained.

11. Hence, the following order :

ORDER

- (i) The Revision Application stands rejected.
- (ii) It is, however, clarified that the issue of bar to the suit for want of notice envisaged by Section 164 of the Act, 1960, be adjudicated by the trial Court, without being influenced by the observations in the impugned order and the observations made hereinabove.

(N.J.JAMADAR, J.)