

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

WRIT PETITION NO.17242 OF 2024

Smt. Ratnaprabha P. Gade

... Petitioner

V/s.

Sambhaji Co-operative Housing
Society Limited and ors.

... Respondents

Mr. Nikhil Wadikar with Mr. Kastur Patil i/by Mr. Nandu V. Pawar, Advocates
for the Petitioner.

None for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 26 February, 2025.

P.C. :

1. The Petitioner challenges order dated 16th August, 2024 passed by the Appellate Court allowing Revision Application No.41 of 2024 and setting aside the order dated 14th March, 2024 passed by the learned Judge of the Co-operative Court. The Co-operative Appellate Court has allowed the application filed by Respondent No.1-Society under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) for rejection of the plaint and has accordingly rejected Dispute No.103 of 2023 under provisions of Order VII Rule 11(d) of the Code.

2. I have heard Mr. Wadikar, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

3. In Dispute No.103 of 2023 the Petitioner had sought the following prayers:-

- a. The Defendants No.1 to 3 be directed to immediately remove the encroachment upon open space of the Defendant No.1 society carried out by Mr. V. B. Pawar, by demolishing the illegal compound constructed by Mr. V. B. Pawar by keeping/ maintaining the 8 ft. width between the plot on either side;
- b. The Defendant No.1 to 3 be directed to remove the 02 coconut trees hindering the movement of vehicles of the Plaintiff;
- c. The Defendant No.1 to 3 be instructed to take necessary steps to immediately discontinue and stop commercial activities conducted by Mr. V. B. Pawar from his premises;
- d. The Defendants be directed to pay damages to the tune of Rs. 20,000/- (Rupees Twenty Thousand Only) to the Plaintiff towards the mental harassment;
- e. The Plaintiff may kindly be allowed to amend the present Plaint as and when required.
- f. The present suit may kindly be decreed with cost.
- g. Any other just and equitable orders may kindly be passed.”

4. After going through the prayers raised by the Petitioner in her dispute application, it appears that she is aggrieved by alleged unauthorized construction carried out by Mr. V. B. Pawar which apparently causes hindrance for parking the vehicles of the Petitioner. The real grouse of the Petitioner is thus against the action of Mr. V. B. Pawar who also happens to be another member of the Society. It therefore cannot be contended that the dispute which is sought to be raised by the Petitioner is the one that touches upon management/business of the Society. In my view therefore, the Co-operative Appellate Court has rightly held that the plaint filed in the dispute does not disclose cause of action.

5. Mr. Wadikar would rely upon provisions of sub-section (1) of Section 94 of the Maharashtra Co-operative Societies Act, 1960 (**the Act**) in support of his contention that the provisions of the Code may apply to the proceedings before the Co-operative Court only after hearing of the dispute commences. He would accordingly submit that power under Order VII Rule 11 of the Code could not have been exercised before the commencement of hearing of the dispute. I am unable to agree. The words “hearing a dispute” cannot be misconstrued to mean that the provisions of the Code can be invoked only after hearing of the dispute begins. The expression “The Co-operative Court, hearing a dispute” essentially refers to the learned Judge who is in *seisin* of the dispute and the provision cannot be interpreted to mean that the provisions of the Code would be inapplicable to the Co-operative Court till the formal hearing commences.

6. Reliance of Mr. Wadikar on the provisions of sub-section (2) of Section 93 of the Act also does not cut any ice. The same relates to suspension of proceedings in any dispute in the event of the Co-operative Court arriving at a conclusion that the question or issue involves any complicated question and which needs to be adjudicated by the Civil Court and which needs referred for adjudication by one of the parties to the Civil Court.

7. In my view, the Co-operative Court is also vested with the jurisdiction to reject the dispute where the same does not disclose any cause of action. It cannot be contended that provisions of the Code are entirely inapplicable to the inquiry before the Co-operative Court. Therefore, if the Co-operative

Court comes to a conclusion that the dispute is vexatious and does not really bear out any cause of action, the Co-operative Court would not be without jurisdiction to nip out such baseless dispute of the bud so as to protect the Opponent from being subjected to lengthy trial in respect of a dispute which itself is not maintainable.

8. I therefore do not find any valid reason to interfere in the order passed by the Co-operative Appellate Court.

9. Writ Petition is accordingly rejected without any order as to costs.

(SANDEEP V. MARNE, J.)