



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.269 OF 1997

Nagpur Housing and Area Development
 Board having its Officer at MLA
 Hostel, Civil Lines, Nagpur through its
 Chief Officer.
 (Appellant in RCA No.370/1987 and
 Defendant No.2 in SCS No.89/1977)

...APPELLANT

...V E R S U S...

LRs of respondent
 no.1 amended as per
 Court's order dated
 26.11.2019.

1. Vasant Vithobaji Kharwade
 (Dead) through LRs
 (Original Plaintiff in SCS No.89/1977 &
 Defendant No.1 in RCA NO.370/1987)
- 1(a) Smt. Sonali W/o Nilesh Dhomne,
 Plot No.2, Ward No.71, Mama Road,
 Dharampeth, Nagpur-440010.
 (Appeal is dismissed against respondent no.1 by Registrar (J)
 order dated 6.10.2022)
2. The Collector, Nagpur District,
 Nagpur.
 (Original Defendant No.1 in SCS No.89/1977 &
 Defendant No.2 in RCA NO.370/1987)
3. The District Deputy Registrar,
 Cooperative Societies, Nagpur.
 (Original Defendant No.3 in SCS No.89/1977 &
 Defendant No.3 in RCA NO.370/1987)
4. Gautam Cooperative Housing Society,
 Nagpur, through its Chairman, Office at
 162, Anandrao Marg, Ashok Nagar, Nagpur.
 (Appeal is dismissed by Court's order dated 05.06.2023)

Amendment
 carried out as per
 Court's order
 dated 01.04.2017

5. Rajendra Kumar Tarachand Jain and resident of Khuniyabai Wada, Parwar Circle No.8/13, Dharaskar Road, Itwari, Nagpur-400 002.
(Original Defendant No.5 in SCS No.89/1977 & Defendant No.5 in RCA NO.370/1987)

...RESPONDENT

Shri A.P. Potnis, Advocate for appellant.

CORAM :- M.W. CHANDWANI, J.

DATED :- 06.02.2025.

ORAL JUDGMENT (PER : M.W. CHANDWANI, J):

. Unfortunately, this appeal of 1997 is being dealt with in the year 2025. Without going into the question of who is to be blamed, I proceed to dispose of the appeal.

2. This appeal takes an exception to the judgment and decree passed by the Civil Judge Senior Division, Nagpur in Special Civil Suit No.89/1977, whereby decreeing the suit of respondent no.1 which has been confirmed by the Second Additional District Judge, Nagpur in Regular Civil Appeal No.370/1987.

3. The case falls in a narrow compass as under :

Respondent no.1 had borrowed an amount of Rs.8,000/- as loan from the respondent no.4 – Society. The respondent no.4-Society went into liquidation in the month of

August 1964. The liquidator of the respondent no.4-Society passed the order of recovery of Rs.14,414/- from respondent no.1 and accordingly, a certificate for recovery of Rs.20,192/- against respondent no.1 came to be issued. Due to non-payment of the amount, on 13.01.1977, the house of respondent no.1 was auctioned for Rs.25,000/- by the respondent no.4-Society. Respondent no.1 filed Special Civil Suit No.89/1977 challenging the abovesaid auction. By the impugned judgment and decree, the trial Court declared the recovery proceedings illegal, null and void. Moreover, the appellant or its officers were restrained from confirming the sale of the house belonging to the respondent no.1. The appellant feeling aggrieved, made an unsuccessful attempt before the learned District Judge and thereafter, filed this appeal.

4. The appeal has been admitted on the following substantial question of law:

“A. Whether the Civil Court had jurisdiction to decide the civil suit filed by respondent no.1 for declaration that he has paid all the amounts to respondent no.4 Cooperative Housing Society and that therefore Board could not recover amounts from him?”

B. Whether suit filed was cognizable in the absence of statutory notice under Section 164 of the Maharashtra Cooperative Societies Act or Section 173 of Maharashtra Housing and Area Development Act or Section 32 of Madhya Pradesh Council Board Act, 1950?”

C. Whether finding recorded by Court's below that there was no privity of contract between appellant Board and respondent No.1 is correct? ”

5. Learned counsel for the appellant vehemently submitted that since, there is a dispute between a member and a cooperative society therefore, the suit is barred under the provisions of Section 91 of the Maharashtra Societies Act, 1960 (for short “**Act of 1960**”). According to him, it is the Cooperative Court which ought to have redressed its grievance. It is also contended on behalf of the appellant that notice under Section 164 of the Act of 1960 or Section 173 of Maharashtra Housing and Area Development Act of 1976 or Section 32 of Madhya Pradesh Housing Board Act, 1950 has not been issued.

6. Though served nobody appears on behalf of the respondents. Having heard the learned counsel for the appellant and having gone through the judgment impugned and material available on record, it transpires that initially, respondent no.1 was a member of the respondent no.4–Society. He obtained a loan of Rs.8,000/- repayable with interest by way of monthly instalments of Rs.46/- per month within 30 years. There are concurrent findings of the Courts below that respondent no.1 a made payment of Rs.11,292/- on the

date of the suit out of Rs.14,617/-. It is also matter of record that respondent no.4-Society went into liquidation and the liquidator initiated the proceedings against respondent no.1. Both the Courts below held that proceedings for recovery of Rs.20,192/- initiated by the appellant are not tenable and quashed the recovery proceedings. So far as the issue of jurisdiction is concerned, the trial Court and the appellate Court have already dealt with the said issue and recorded a finding that when a cooperative society goes into liquidation, a suit is tenable against the recovery proceedings and can be adjudicated upon by a civil Court. I do not find any provisions contrary to what is as opined by the trial Court and the appellate Court. So far as the submission of mandatory notice under Section 164 of the Act of 1960 or Section 173 of the Act of 1960 is concerned, the trial Court as well as the appellate Court have in explicit terms held that a notice vide Exh.182 was given not only to the respondent no.4-Society but also to the appellant. The authority is constituted under the Maharashtra Housing and Area Development Act, 1976 and therefore, there is no substance in the argument of the learned counsel for the appellant that the suit is bad for non-issuance of notice.

7. So far as the issue of privity of contract between the appellant and respondent no.1 is concerned, since the recovery proceeding was quashed on the very ground that a substantial part of the amount mentioned in the recovery certificate was already paid by respondent no.1 and not on the ground that there was no privity of contract between the appellant and respondent no.1; therefore, no substantial question of law arises in this appeal. Accordingly, the second appeal stands dismissed.

(JUDGE)

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