



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8912 OF 2019

Hemprabha co-operative Housing society
Ltd., a Co-op. Housing Society
registered under MCS Act, 1960,
having its registered office at -
68, Marine Drive, Mumbai-400020

...Petitioner

Versus

1. Kishore C. Waghela,
Aged 53 years, Occ. : Service,

2. Bipin C. Waghela
Aged 50 years, Occ. : Service,

3. Navin C. Waghela,
Aged 48 years, Occ. : Service,
All Indian Inhabitants of Mumbai
Residing At Room No. 4, Hemprabha,
Hemprabha CHS Ltd., 68,
Marine Drive, Mumbai- 400020.

...Respondents

Adv. N. N Bhadrashete for the Petitioner.
Adv. Vishal C. Ghosalkar for the Respondent.

Coram : Sharmila U. Deshmukh, J.
Reserved on : June 26, 2024.
pronounced on : July 22, 2024.

P. C. :

1. By this petition filed under Article 227 of Constitution of India,
challenge is to the judgment and order dated 4th February, 2019

passed in Appeal No.50 of 2018 by the Co-operative Court, Mumbai allowing the Appeal resulting in quashing and setting aside of the judgment dated 7th April, 2018 passed by the Trial Court in Dispute No.126 of 2006.

2. The facts required to be expounded is that Dispute bearing No. CC/I/126 of 2006 was filed by the Petitioner Society in the Co-operative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (MCS Act) seeking eviction of the Respondents from the room reserved by the Petitioner as servant quarters. The case of the petitioner was that initially one Diwalibai Hodiya Waghela, who was the mother-in-law of the deceased Respondent No. 1 was working as a sweeper in the Society and during her employment she was given a residential accommodation free of charge by the Society in Room No.4, which is reserved by the Society for servant. The monthly salary was paid to her and the accommodation was free of charge which had electricity and water connection and the charges were paid by the Society. After the death of Diwalibai, the son of Diwalibai was appointed as a sweeper in her place and was permitted to occupy Room No.4 without any charge. He had given an undertaking that he would surrender the possession of the premises to the Society upon termination of his services and his family members will not have any right in respect of the said room. The son

of Diwalibai expired on on 8th January 2002 and thereafter his wife i.e. Rewaben, the deceased Respondent No. 1 started rendering services as sweeper and was being paid monthly salary and permitted to occupy Room No. 4 until her services were terminated.

3. The Petitioner addressed notices dated 14th June 2004, and 20th June, 2004 calling upon Respondent No. 1 to hand over the vacant possession of Room No.4 to the Society, however the Respondent did not hand over the possession. On 10th of June 2005, the Society informed the Respondent No.1 that she had remained absent without intimation of leave and that her services are not satisfactory and if she did not resume services, the Society would be constrained to issue show cause notice for termination of her services. On 29th June 2005, the Society issued show cause notice to the deceased respondent No. 1 on ground of absenteeism from 2nd June, 2005 to 15th June, 2005. There was no response and vide notice dated 15th July, 2004, the services of the Respondent No. 1 came to be terminated with effect from 18th July, 2005. Subsequently, further communication was addressed by the Society to the Respondent, which was not responded by the Respondent No. 1 and as such, the dispute came to be filed under Section 91 of the MCS Act before the Co-operative Court seeking direction to the Respondents to vacate and hand over the peaceful possession of Room No.4 and for payment of mesne

profits of Rs. 15,000/ per month for occupying Room No.4.

4. The suit came to be resisted by the Respondents, contending that the subject matter of the dispute does not fall under the purview of Section 91 of the MCS Act, as the suit premises was not allotted by the Society and the same was given to the respondent No. 1's mother-in-law prior to the registration of the Society. It was contended that the suit premises was given by the original landlord of the building to the Respondent No. 1's mother-in-law who was employed as a sweeper by the then landlord and the rent was adjusted from her salary which was continued by the Petitioner-Society and thus the Respondents are protected tenants. It was denied that the premises were being occupied free of cost or that the water or electricity was supplied free of cost. It was contended that the Respondents had not received any notices or termination letter from the Society.

5. An additional written statement came to be filed by the Respondents on account of the amendment which was carried out in the Dispute Application replacing the original paragraph No.2. The additional written statement contended that the Respondent No. 1's mother-in-law was in employment of the original landlord and she was given Room No.4 by the original landlord and not by the Society. It was denied that the room was occupied by free of cost.

6. The parties went to trial. The Trial Court by its judgment dated

7th of April 2018, framed the issue as regards the jurisdiction of the Co-operative Court and answered the same in affirmative. The Trial Court held that the Room No.4 was given as residential accommodation to Respondent No. 1 during her service free of cost and the Petitioner was entitled to recover vacant and peaceful possession of the disputed premises. The Trial Court on the aspect of jurisdiction considered that the appointment, employment of the servant is within the management of the Society and the subject matter pertains to the recovery of possession of Room No.4 allotted to the Respondent free of cost being a servant and salary was separately paid for the service. The Trial Court held that the employment of a person is necessarily part of management of the Society and there is distinction between business of Society and management of Society. It held that management relates to day to day affairs of the Society in consonance with bye-laws. The Trial Court held that the disputed room is the property of the Society which the Society is bound to manage, maintain and administer as well as deal with the same and held that the Co-operative Court has jurisdiction.

7. On merits, the Court held that the Respondent No.1 was serving as servant and the room was allotted for purpose of residence. It held that Respondent No. 1's services were terminated and even after her demise the family members continue to occupy Room No.4. It

held that the Society has proved that the electricity charges of the Room No.4 were paid by the Society. The Trial Court partly allowed the dispute and directed the Respondents to hand over the vacant possession of Room No.4.

8. As against the judgment of Trial Court, the Respondents preferred an Appeal before the Maharashtra State Co-operative Appellate Court being Appeal No. 50 of 2018 which came to be allowed on the ground of lack of jurisdiction. The Appellate Court held that the main object of the Society was to purchase land and to construct and allot flats to its members and it's ancillary object was to manage, maintain and administer the property of this Society. The Appellate Court noted the decision in the case of ***Nowroji Mansion Co-operative Housing Society vs. Kanta Ruben Narshia & Anr., [WP No. 178 of 2013]*** which held that suit for recovery of possession of property given to employee of the Society for his service tenure is not maintainable after termination of service of the employee by the Society. The Appellate Court noted that as per the definition of Section 2(k) of Industrial Disputes Act, the present dispute would not fall within the ambit of Section 91 of the MCS Act 1960.

9. Heard Mr. N. N. Bhadrashete, learned counsel for the Petitioner and Mr. Vishal C. Ghosalkar, learned counsel for the Respondents.

10. Mr. Bhadrashete, learned Counsel for Appellant would submit

that Respondent No.1 was employed by the Petitioner Society as sweeper and was permitted to occupy the servant room, which services were discontinued in 2005. Pointing out to the pleadings in the plaint, he would submit that the Society is a Tenant Co-partnership Housing Society and one of the object of the society was to manage, maintain and administer the property of the Society and to do all things necessary or expedient for the attainment of the objects of the Society specified in the bye-laws. He submits that for the purpose of management of the Society, as per bye-law 139, the committee was vested with the power to take steps to maintain the property of this Society in a good condition and to carry out repairs to it and the renewals thereof.

11. He would submit that the administration of the property of the Society constitutes management of the affairs of the Society. He submits that for maintaining the Society, the sweeper was appointed and was allotted Room No.4. He submits that the recovery of the possession of the Society's property is concerned with the management of the Society.

12. He has taken this Court in detail through the findings of the Trial Court and the Appellate Court. He submits that the reliance placed by the Appellate Court on the decision of ***Deccan Merchants Co-operative Bank Ltd. vs. M/s. Dalichand Jugraj Jain And Ors., [AIR***

1969 SC 1320] is misplaced as the decision is distinguishable on facts as in that case, the Apex Court was considering Section 91 of the MCS Act in the context of business of the Society and not management of Society. He submits that in the case of ***Nowroji Mansion Co-operative Housing Society (supra)*** the issues which were under consideration were different. He submits that in the case of ***Maharashtra Cooperative Housing Finance Society Ltd. Bombay And Ors., [AIR 1984 Bombay 419]***, the Division Bench of this Court has held that the employed person is necessary part of the management of the Society and therefore when a dispute involves a claim which could be granted by authority under the Co-operative Societies Act, that dispute must be held to be touching the management of the Society. He submits that in the present case, the Respondent No. 1 was appointed as sweeper and the employment as sweeper was a part of the management of the Society which would fall within the jurisdiction of Co-operative Court under Section 91 of the MCS Act.

12. Per contra, Mr. Ghosalkar, learned Counsel for the Respondents submits that the Respondents were in possession of the premises since 1952 whereas, the Society was formed by the landlord in the year 1971 and registered in the year 1972. He submits that the Respondent No. 1 was tenant paying rent which was deducted from the salary of Respondent No.1. Pointing out the prayers in the

dispute, he submits that no relief of declaration of termination of services was sought. He submits that the principal object of the Tenant Co- Partnership Society is to purchase the building for allotment of the flats thereof to the members of the Society. He submits that thus, the object to purchase the building is the business of the Society, whereas, the management of the Society is equated with the affairs of the Society. He submits that the decision in the case of ***Nowroji Mansion Co-operative Housing Society (supra)*** is squarely applicable as the facts are identical. He submits that in the case of ***Deccan Merchants Co-operative Bank Ltd., (supra)*** the Apex Court has held that business in the context of Section 91 of the MCS Act, does not mean the affairs of the Society because election of office bearer, conduct of general meetings and management of Society would be treated as affairs of the Society and the business would mean the actual trading or commercial or other similar business of the Society which the Society is authorized to enter under the Act and Rules and its bye-laws. He submits that the Apex Court has held that the question, whether the dispute would be dispute touching the business of the Society would depend upon the nature of the Society and the rules and bye-laws governing it. He submits that the facts of ***Maharashtra Co-operative Housing Finance Society Ltd. Bombay (supra)*** are clearly distinguishable.

13. In rejoinder, Mr. Bhadrashete would submit that it is the specific finding of the Trial Court that the services were rendered as sweeper and having the provision of servant room, the Society had allotted it to the Respondents for the purpose of residence. He submits that the same was therefore a dispute touching the management of the Society.

REASONS AND ANALYSIS :

14. The principle issue seeking determination is whether the Co-operative Court had the jurisdiction to decide the dispute under Section 91 of MCS Act. It will therefore be profitable to refer to Section 91 of the MCS Act, which reads thus:

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 deregistered 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 deregistered 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 10 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).

15. Plain reading of Section 91 of the MCS Act would indicate that Sub-Section (1) of Section 91 is prefaced with *non obstante* clause and provides that a specified class of disputes arising between specified class of parties can only be referred by any of the parties to the dispute to the Co-operative Court. What is therefore required to be considered is that the subject matter of *lis* and the parties to the *lis* must fall within the provisions of Section 91 of the MCS Act. As far as the parties to the *lis* is concerned, there is no dispute that a dispute between the Society and any past or present, servant or nominee falls within Section 91 of the MCS Act, 1947. The debate is only as regards the subject matter of the dispute, whether the same falls within jurisdiction of Co-operative Court. Section 91 encompasses five kinds of disputes:

- (a) Dispute touching the Constitution of the Society.
- (b) Dispute touching the elections of the committee or its officers.
- (c) Dispute touching the conduct of general meetings of the Society.
- (d) Dispute touching the management of the Society and
- (e) Dispute touching the business of the Society.

16. The dispute touching the management of the society is set out as a different class from the dispute touching the business of the Society. The pleadings in the Dispute Application is that Room No.4 is the property of the Society and was allotted to the Respondent No. 1 as condition of service and as the room was not vacated despite the services being terminated, the dispute is filed seeking recovery of possession of Room No.4 and for mesne profit.

17. The prayers in the dispute would indicate that the relief is confined to recovery of property owned by the Petitioner Society and there is no declaration sought as regards the termination of the services of the deceased Respondent No.1. The Respondents have not filed any counterclaim seeking any right, title or interest in Room No.4. The dispute in present case does not constitute an employer-employee dispute pertaining to the employment of Respondent No. 1. The relief is simply for recovery of property and for mesne profit.

18. The Petitioner is classified as Tenant Co-partnership Housing Society where the land and building is owned by the Petitioner and is allotted to the members. The Society has adopted the model bye-laws and the objects of the Society is as under:

"5. The object of the society shall be as under:

(a) To buy or take on lease a plot or plot Nos...ofadmeasuring.....sq. Metres and to construct flats thereon for allotment of the members of the society for their authorised use.

OR

To purchase a building or buildings known as.....constructed on the plot/plots Nos.....of.....admeasuring....sq metres for allotment of flats therein to the members of the society for their authorised use.

(b) To manage, maintain and administer the property of the Society,

(c) To raise funds for achieving the objects of the society;

(d) To undertake and provide for, on its own account or jointly with a co-operative institution, social, cultural or recreative activities:

(e) To do all things necessary or expedient for the attainment the objects of this Society specified in the bye-laws.

19. The submission of Mr. Bhadrashete is that recovery of possession of asset of the Society is a dispute touching the management of the Society. In case of ***Gujarat State Co-operative Land Development Bank Ltd*** (supra), the Apex Court considered the expression "management of society" occurring in Section 91 of MCS Act in the context of dispute raised by terminated employee of the Bank before the Labour Court. The contention of the Appellant Bank was that it was a Co-operative Society governed by State Co-operative Societies Act and Registrar had the jurisdiction to decide the dispute and not the Labour Court. The Apex Court held in paragraph 35 and 36 as under:

"35. We will now, focus attention on the expression 'management of the Society' used in Section 96 (1) of the Act of 1961. Grammatically, one meaning of the term 'management' is: 'the Board of Directors' or 'the apex body' or

Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society'. In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day-business of the Society, (See Words and Phrases by West Publishing Co., Permanent Edition, Vol. 26, page 357. citing, Warner and Swasey Co. v. Rusterholz D. C. Minn 41 F. Supp 398, 505). Another meaning of the term 'management', may be: 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society'.

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholakia. The use of the term 'management' in such a wide sense in Section 96 (1) appears to us, to be very doubtful."

20. The Apex Court considered it doubtful that the term management will encompass the entire staff of servants and workmen of the Society. At the same time, the Apex Court has considered that the grammatical meaning of term 'management' may be managing, regulation and control of the affairs of the Society. In other words, the managing of affairs of Society is linked to management of Society. One of the object of Society is to manage, maintain and administer the property of the Society and to do all things necessary for the attainment of the objects which is linked to management of Society. In ***Deccan Merchants Co-operative Bank Ltd.*** (*supra*) one of the question being considered by the Apex Court was the meaning of the expression "touching the business of the Society".

The Apex Court held that it is clear that the word business in the context of Section 91 of the MCS Act does not mean the affairs of the society because elections of office bearers, conduct of general meeting and management of a society will be treated as affairs of the Society. The Apex Court held that the nature of business which a Society does can be ascertained from the objects of the Society, however it is difficult to subscribe to the proposition that whatever the Society does or is necessarily required to do for purpose of carrying out its objects can be said to be part of its business. The Apex Court was dealing with a Society which was co-operative bank and the dispute pertained to the eviction of the tenants and was not a dispute between the specified class of parties under Section 91 of MCS Act.

21. It thus clearly follows that the acts done by the Society for purpose of carrying out its objects is not mandatorily part of its business. There is distinction between business of the Society and management of the Society. The management of the Society includes carrying out the day to day affairs of the Society like raising maintenance invoices, recovery of maintenance, providing services to its members, looking after the general upkeep of the land and building owned by the Society. If the management of the Society takes within its fold all acts which are necessary for the protection and preservation of the assets of the Society, in my view, the initiation of

proceedings for recovery of asset of the Society from the hands of an occupier who no longer has the authority of the Society to occupy its assets falls within the expression “management of the Society.” In the present case, one of the objects of the Society as discerned from the bye-laws is to manage, maintain and administer the property of the Society. The words used in the object are wide enough to include the protection and preservation of the assets of the Society and will take within its fold the act of recovering possession of the property owned by the Society. The conduct of the day to day affairs of the Society is linked to the proper application, administration and management of the assets of the Society.

22. It is well settled that the Co-operative Court established under the MCS Act is a substitute for Civil Court and the jurisdiction of the Co-operative Court will not go beyond the jurisdiction vested in the Civil Court. The claim of the Petitioner Society was that the Respondents were permissive user of the premises and upon permission being withdrawn, the Respondents were liable to vacate and hand over possession of the premises to the Society. The dispute is not a dispute between the employer and employee regarding the service of the employee but dispute regarding the recovery of the assets of the Society. The scope of jurisdiction of Co-operative Court cannot be wider than the Civil Court. As the Civil Court would have the

jurisdiction to grant the relief of recovery of possession of the premises from the user whose permission to use the premises has been withdrawn by the owner, the Co-operative Court would have the jurisdiction to decide the present dispute regarding the management of the affairs of the Society.

23. In the case of ***Maharashtra Cooperative Housing Finance Society Ltd. Bombay (supra)***, the facts are that the terminated employee approached the Co-operative Court under MCS Act seeking reinstatement as well as award of damages. The Division Bench observed that the decision of Apex Court in ***Gujarat State Co-operative Bank (supra)*** held that the dispute involving a claim for reinstatement of employee was neither touching the business nor management of the Society. The Division Bench held thus in paragraph 25:

“..... The claim such as the one made by the respondent in the instant case namely the claim for damages on the allegation that the society has wrongfully terminated his services cannot be said to be outside the ambit of the terms “management in S. 91 of Co-operative Societies Act. A Society or for that matter any institution must work with human beings and in case of Co-operative Society, the management of the Society must be carried out through and with the help of the employees of the Society. The employment of persons itself may not be part of the business of the society; it may not be even touching the business of the society but employing persons is necessarily a part of the management of the Society and therefore when a dispute involves a claim which could be granted by an authority under the Co-operative

Societies Act, that dispute must be held to be touching the management of the Co-operative Society....”

24. The Division Bench has held that when the dispute involves a claim which could be granted by an authority under the Co-operative Societies Act, that dispute must be held to be touching the management of the Co-operative Societies. The Petitioner Society being Co-partnership Housing Society had a duty under the bye-laws to manage and maintain the assets of the Society and to take all steps to protect and preserve the assets of the Society. The administration of the assets of the Society forms part of management of affairs of the Society and would be covered under Section 91 of MCS Act.

25. In case of ***Nowroji Mansion Co-operative Housing Society (supra)***, the facts are identical to the present case. The dispute was filed by the Society against the Respondents for eviction. The claim was that the predecessor in title of the Respondents was employed as liftman and small room was allotted to him as service quarters. The Respondents claimed that their predecessor in title was in possession of the structure prior to the formation of the Co-operative Society. The Learned Single Judge held that the Petitioner Society was not claiming through any members and initiation of the proceedings for removal or eviction of the Respondents cannot be said to be the business of the Society. Upon careful reading of the said decision, it is

clear that no submissions were raised and there is no finding as to whether the dispute was a dispute touching the management of the Society. It is evident from the said decision that the learned Single Judge considered the decision of ***Deccan Merchants Co-operative Bank*** (supra) in the context whether the dispute touching the assets of the Society would be dispute touching the business of the Society and held the same in the negative. The decision does not lay down the proposition of law that the dispute pertaining to the assets of the Society does not touch the management of the Society. Hence, the said decision does not assist the case of the Respondents.

26. The Appellate Court has held that to maintain, manage and administer the property of the Society was an ancillary object. There is no basis for this finding as one of the objects of the Society as set out in the Model Bye-laws is to maintain, manage and administer the property. There is no bifurcation in the Model Bye-laws as to main objects and ancillary objects. Being a tenant Co-partnership Housing Society, the Society is the owner of the land and the structure, and the management of the affairs of the Society will include management and administration of the property owned by the Society.

27. The Appellate Court has relied upon the decision of ***Deccan Merchants Co-operative Bank Ltd*** (supra) which is distinguishable on facts and on the decision of ***Nowroji Mansion Co-operative Housing***

Society (*supra*) which does not deal with the issue whether the dispute as regards eviction is a dispute touching the management of the Society. The Appellate Court has held that Co-operative Court has no jurisdiction in view of definition of industrial dispute under Section 2(k) of Industrial Disputes Act, without noticing the relief prayed in the Dispute. The Appellate Court was swayed by the fact that the Respondent No. 1 was an erstwhile employee of the Petitioner Society and failed to appreciate that the reliefs sought in the dispute did not pertain to the termination of the employment.

28. None of the decisions relied upon by the learned counsel for the Respondent addresses the issue as regards the expression “management of the Society.” The claim in the present case arises out of the dispute concerning the assets of the Society which the Society has as its object to maintain and administer, the recovery whereof from the occupier, whose permissive user has been withdrawn by the Society, could have been entertained also by the Civil Court but not by the Industrial Court and as such, the Co-operative Court would have the jurisdiction to entertain and adjudicate the dispute.

29. In light of the above, in my view, the dispute falls within Section 91 of MCS Act and Co-operative Court will have the jurisdiction to entertain and try the dispute. The impugned judgment dated 4th February, 2019 passed in Appeal No. 50 of 2018 is hereby quashed and

set aside. As the Appellate Court has not rendered any finding on merits as it held that Co-operative Court did not have the jurisdiction, the Appeal is restored to the file of the Appellate Court to decide the same on merits.

30. Resultantly, Petition succeeds. Interim application, if any, does not survive for consideration in view of the final disposal of the Petition.

[Sharmila U. Deshmukh, J.]