

Marine Times Publications Pvt. Ltd.

Vs

Shriram Transport and Finance Co. Ltd. and Another

Civil Appeal No. 4979 of 1990

(M.H. Kania, R.M. Sahai JJ)

26.10.1990.

JUDGMENT

KANIA J

1. Leave granted. Counsel heard.

2. This is an appeal from the judgment of a learned single Judge of the Bombay High Court dismissing Writ Petition No. 6058 of 1986 filed by the appellant on the Appellate Side of that Court. The appellant and respondent No. 1 are companies incorporated under the Indian Companies Act. Respondent No. 2 is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1961 (hereinafter referred to as the said Act"). Appellant is a member of respondent No. 2-Co-operative Society and has its office premises in the building owned by respondent No.2. Some time prior to September 10, 1985 the appellant entered into an agreement to sell the said office premises to respondent No. 1 subject to the approval of respondent No. 2. The terms of the said agreement were incorporated in a letter dated September 10, 1985 addressed by the appellant to the Vice-Chairman and the President of respondent No. 1. It was set out in the said letter that the price for the said premises was to be calculated at the rate of Rs. 2,000 per square feet. The letter further stated :

"We are agreeable to sell you the same subject to approval of the Co-operative Society owning the building. We shall provide you vacant possession and hand over the same free of all incumbrances only after we are able to obtain alternate accommodation for our company....."

3. A sum of Rs. 50,000 was paid by a demand draft by respondent No. 1 to the appellant under the said agreement. By a letter dated November 15, 1985 the appellant sought the approval of respondent No. 2 to the transfer of the said office premises to respondent No. 1. By its letter dated November 18, 1985 addressed to the appellant, respondent No.2 stated that the appellant was requested to offer to transfer of the said premises to the existing member of the society as a first preference as per the established practice of the society. It further stated that in case the existing members of respondent No. 2 were not willing to buy the said premises, the premises could be given for transfer to an outside transferee. By its letter dated November 22, 1985, addressed to respondent No. 1 the appellant pointed out that respondent No. 2 had declined to grant permission for transfer unless the premises were first offered to the existing members of the society by way of a first preference. The said letter then stated that it was not possible to continue negotiations any further.

Along with the said letter the demand draft ;of Rs. 50,000 referred to above was returned by the appellant. Without any further correspondence, respondent No. 1 filed a dispute in the Co-operative Court No. 1, Bombay against the appellant and respondent No. 1 (2?) by statement of claim which can be conveniently referred to as a plaint.

4. In the plaint respondent No. 1 inter alia stated that on the promises and representations made by the appellant to respondent No. 1 it had paid a sum of Rs. 2,60,000 to one I.M. Choksey representing himself as the Chairman of the appellant and one S. Ramakrishnan, claiming to be the representative of his wife who was a Director of the appellant. Respondent No. 1 further claimed that it had paid a further sum of Rs. 40,000 in cash to the appellant without taking a receipt. Respondent No. 1 urged that but for the assurance given by Choksey and Ramakrishnan acting on behalf of the appellant and one Col. G. D. Hadeb, acting on behalf of respondent No. 2 that the appellant would be in a position to transfer the said premises by the end of November 1985 and respondent No. 2 would not object to such transfer, respondent No. 1 would not have paid such a huge amount to the appellant. Respondent No. 1 further stated that the appellant and respondent No. 2 had promised respondent No. 1 that they would complete the formalities of transfer of the said premises within a few days and there would be no objection or obstruction whatever in the said transfer. Respondent No. 1 went on to say that it was given to understand that the appellant and respondent No. 2 were conspiring to sell the said premises to a third party for a larger amount. Respondent No. 1 was ready and willing to perform its part of the contract and prayed for an order for specific performance of the contract. The relevant portion of paragraph 10 of the plaint, which deals with jurisdiction, sets out that respondent No. 2 is a cooperative society and is vitally interested in the transfer and sale of the said premises and to ensure that the transfer is done under the provisions of its bye-laws, the said Act and the rules. Respondent No. 2 had taken active part in the transaction entered into between respondent No. 1 and the appellant who is a member of respondent No. 2, and that respondent No. 1 was claiming his rights through the appellant who was a member and hence, the subject matter of the dispute fell within the ambit of S. 91 of the said Act. Respondent No. 1 prayed for a declaration that the aforesaid dispute was a dispute falling under S. 91 of the said Act and prayed that the appellant and respondent No. 2 should be directed to specifically perform the agreement recorded in the letter of September 10, 1985 and transfer the said premises to respondent No. 1. The rest of the prayers in the plaint are immaterial for our purposes.

5. Pursuant to certain orders made by the Bombay High Court the Cooperative Court framed an issue as to whether it had jurisdiction to entertain the dispute. The Court recorded evidence led by respondent No. 1 on this issue and dismissed the dispute for want of jurisdiction. This order was set aside by the Maharashtra Co-operative Appellate Court, Bombay, by its order dated September 9, 1986. The appellant herein filed a writ petition in the High Court to challenge the said order. The learned single Judge who heard the said writ petition dismissed the same and held that the case was governed by the provisions of S. 91 of the said Act. It is this decision which is sought to be challenged before us by the appellant.

6. It is submitted by Mr. Tarkunde, learned counsel for the appellant that the agreement to sell the said premises with which we are concerned, was entered into between the appellant, a member of respondent No. 2, a Co-operative Society and respondent No. 1, a non-member. The said agreement was for transfer of premises belonging to the appellant to the respondent No. 1, a non-member, in a building owned by respondent No. 2, a co-operative society. The claim in the dispute was for obtaining the specific performance of the said agreement and the prayer for directing respondent No. 2 to approve the said agreement was in the nature of an ancillary prayer to complete the relief. The main relief was for specific performance of the said agreement. It was submitted by him that

such a dispute cannot be said to be a dispute "touching the management or business of a society" as contemplated in sub-section (1) of S. 91 of the said Act nor can it be said that respondent No. 1, a non-member was making a claim against respondent No. 2 society through a member, namely, the appellant. The main relief sought was for specific performance of an agreement by a member to sell the premises in the society building to a non-member and such a claim can never be said to be made against the society through a member.

7. In order to appreciate the submissions made, it is desirable to set out the material portion of S. 91 of the said Act which runs as follows:

"91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the construction, elections of the office bearers, 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) X X X X X

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or a person who claims to be a member of the society.

(c) to (e) X X X X X

(3). Save as otherwise provided under subsection (3) of 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)."

The rest of the provisions of the said section are not relevant for our purposes.

8. It is common ground that the dispute in this case is not covered by clauses (a) or (c) to (e) of sub-section (1) of S. 91 of the said Act and the only question is whether it is covered by clause (b) of the said sub-section.

9. We propose to consider first the submission of the learned counsel for the appellant that even if the dispute in the present case can be said to be one touching the business of respondent No. 2, a co-operative society, it could not be said that it was a dispute between a member and a member or between a person claiming through a member and the society or between any of the classes covered by Section 91(1)(b). The primary claim made by respondent No. 1, a non-member, was against the appellant and hence, there was no question of respondent No. 1 claiming any right against the society through the appellant as a member. The prayer for approval of the agreement directed against respondent No 2 Society, could be granted or even considered only if specific performance was ordered against the appellant and was in the nature of an ancillary prayer which would not alter the nature of the main dispute. He placed strong reliance of the decision of this Court in Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain, (1969) 1 SCR 887 : (AIR 1969 SC 1320). The facts of the said case, admittedly, are not analogous to the facts in the case before us. What was emphasised by learned counsel, however, was that in that case, in construing S. 91(1)(b) of the said Act, this Court held that before a person can be said to claim through a member, the claim should arise through a transaction or dealing, which the member entered into, with the society

as a member. In that case, the fourth respondent obtained a loan from the appellant bank which was a banking company established as a Co-operative Society under the Co-operative Societies Act of 1912 and mortgaged certain property with the bank as security for the loan. As he defaulted in the repayment of the loan, the property was transferred to the bank under S. 100 of the said Act of 1960. The physical possession was also handed over to the bank. In the meantime, the fourth respondent had executed an agreement which mentioned that the property had been mortgaged to the appellant bank, and whereby the entire ground floor of the building was let to the first respondent at a monthly rent. The bank called upon the first respondent to vacate the premises but he refused to do so. Thereupon, the bank applied to the District Deputy Registrar, Co-operative Societies, Bombay, praying that the dispute between the bank and the first respondents should be referred to arbitration under the provisions of S. 91 of the said Act. The Assistant Registrar passed an order to the effect that he was satisfied that there was dispute within the meaning of S. 91(1) of the said Act and he referred it for the decision of his nominee. The first respondent successfully challenged the order by a writ petition under Art. 226 of the Constitution in the Bombay High Court. On appeal this Court held that when the original owner executed the lease he was not acting as a member but as a mortgagor in possession and, therefore, the claim of the bank did not fall within the provisions of S.91(1)(b) of the said Act. This Court further took the view that the word "business" in the expression "touching the business of a society" in S. 91 does not mean "affairs of the society". It has been used in a narrower sense and means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the said Act and the rules and its byelaws.

10. It appears to us that the submissions of learned counsel for the appellant deserves acceptance.

11. Before a dispute can be referred to a Co-operative Court under the provisions of S. 91(1) of the said Act it is not only essential that the dispute should be of a kind described in sub-section (1) of S. 91 but it is also essential that the parties to the said dispute must belong to any of the categories specified in Clauses (a) to (e) of sub-section (1) of the said section. It is common ground that the parties to the dispute before us do not belong to any of the categories described in Clauses (a) or (c) to (e) of sub-section (1) of S. 91 of the said Act and the only question is whether they can be held to be of any of the categories set out in clause (b) of the said sub-section.

12. We find that the appellant before us is a member of respondent No. 2, a Co-operative society. Respondent No. 1 is not a member. The main question before us is whether the claim of respondent No. 1 in the dispute can be said to be one made against the cooperative society, being respondent No. 2, through the appellant, a member. On analysing the plaint it appears clear to us that the main claim of respondent No. 1 is for a decree or order for specific performance of the agreement, whereby the appellant agreed to sell the said premises to respondent No. 1. The prayer for an order that respondent No. 2 Society should be directed to give their approval to the said transaction was merely an ancillary prayer made with a view to complete the relief of specific performance. As far as the claim to have the agreement specifically performed is concerned, we fail to see how it can be said to be a claim made by a person. (non-member) against the society. The claim of respondent No. 1 against the society, as made in the plaint, cannot be said to be made through a member, the appellant herein, because it is only when a decree for performance of the said agreement is passed against the appellant, that it could be contended that the other relief, namely, for an order directing respondent No. 2 to approve the said transaction is claimed against the society through a member. Moreover, as we have pointed out that relief is only in the nature of ancillary relief, subsidiary to the main relief of specific performance. In our opinion, the dispute set out in the plaint cannot be said to fall within the scope of S. 91 (1)(b) of the said Act and, in view of this, the learned Judge of the

High Court was, with respect, in error in coming to the conclusion that both the parties to the dispute belonged to the categories covered under S.91(1)(b) of the said Act. In our opinion, it is not necessary for us to decide whether the dispute in question was one "touching the business of the society" because even if that were so, it could not be referred to the Co-operative Court in the view which we have taken as set out earlier.

13. Learned counsel for respondent No. 1 drew our attention to the decision of this Court in O. N. Bhatnagar v. Smt. Rukibai Narsingdas, (1982) 3 SCR 681 : (AIR 1982 SC 1097), and submitted that in that judgment the scope of the expression "touching the business" was given a larger connotation than that given to it in the case of Daccan Merchants Co-operative Bank Ltd. v. M/ s. Dalichand Jugraj Jain, (AIR 1969 SC 1320), discussed earlier. In our opinion, it is not necessary to consider the interpretation of the said expression here because, even assuming that the expression "touching the business of the society" has been given a wider connotation in O. N. Bhatnagar's case, as contended by learned counsel, it would make no difference to the result of the appeal in the view we have taken as we have based our conclusion on the construction of the provisions of S. 9 1 (1)(b) of the said Act. The other decisions cited, namely, the decision of a Full Bench of the Bombay High Court in M/ S. Leong v. Smt. Jinabhai G. Gulrajami, AIR ♦ 1981 Bom 244, and the decision of this Court in Sanwarnal Kejriwal v. Vishwa Cooperative Housing Society Ltd., (1990) 2 SCC 288: (AIR 1990 SC 1563), are of no direct relevance to the question before us and hence , we do not feel called upon to discuss the same.

14. In the result, the appeal is allowed and the impugned judgement is set aside. The plaint or the document setting out the dispute shall be returned to respondent No. 1 for presentation to a competent Court.

15. We may clarify that in the event of competent court granting a decree for specific performance against the appellant herein, would be then open to respondent No. 1 to file a dispute before the Registrar against respondent No. 2 for getting an order against respondent No. 2 for approving the transaction of agreement of sale.

16. Looking to the facts and circumstances of the case there will be no order as to costs throughout up to this stage.

Appeal allowed.

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