

SUPREME COUR OF INDIA

Margret Almeida

Vs.

Bombay Catholic Coop. Housing Society Limited

(P. Sathasivam and J. Chelameswar JJ.)

24.02.2012

JUDGMENT

CHELAMESWAR, J.

1. This is an Application filed with the prayer as follows: `In the above facts and circumstances, the Applicants / Appellants most respectfully pray that the Hon'ble Court may be pleased to:

a) Clarify the order dated 30.01.2012 passed by this Hon'ble Court in Civil appeal No.1175-1177 of 2012 titled as Margret Almeida Ors. Etc. Etc Versus The Bombay Catholic Co-operative Housing Society Ltd. Ors. Etc. etc. as sought in Para 6; and / or

b) Pass such other further or other reliefs as the Applicants / Appellants may be found to be entitled under the facts and circumstances stated hereinabove.

2. By the Judgment dated 30-01-2012 C.A.Nos.1175 - 1177 of 2012 were disposed of setting aside the Judgment dated 29-08-2011 of a Division Bench of the Bombay High Court. The said Judgment was rendered in a batch of connected matters, arising out of two suits No.144 145 of 2010, on the original side of the Bombay High Court. The question before the Division Bench was whether the two suits were maintainable in view of Section 91 of the Maharashtra Cooperative Societies Act, 1960. It appears from the Division Bench Judgment of the High Court that the learned Trial Judge not only held that the suits are maintainable, but also, granted interim order in favour of the plaintiffs (appellants/ petitioners herein), directing the parties to the suits to maintain status quo during the pendency of the suits.

3. In view of the conclusion of the Division Bench that the suits were not maintainable, the Division Bench recorded an order of dismissal of the suits.

4. While allowing the appeals, this Court directed, at paras 41 and 42 of the Judgment, as follows:

41. Coming to the question of the interim order in view of our conclusion that the suits in question are maintainable and having regard to the fact that the suits are to be tried by the High Court in exercise of its original jurisdiction, we do not propose to pass any interim order and leave it open to the High Court to consider the applications filed by the plaintiffs for interim orders in accordance with law and pass appropriate orders. The principles governing the grant of interim orders are too well settled and we need not expound the same once again. However, we would like to indicate that on the question of the existence of a prima facie case in favour of the plaintiffs, the following factors are germane and require to be examined. Having regard to the content of the plaint, we are of the opinion that the nature of the legal right, the plaintiffs claim for seeking the relief such as the one sought in the suits necessarily depends upon the byelaws of the Society, the rights and obligations of the various classes of its members with respect to the property in dispute. The High Court may examine the above aspects before passing an appropriate interim order.

42. In view of the above, we also deem it proper to direct all the parties to maintain status quo as on today for a period of two weeks to enable the Bombay High Court to examine the applications of the plaintiffs for interim orders and pass appropriate orders in accordance with law. (Emphasis supplied)

And hence, the present Application.

5. The learned senior counsel for the Applicants Mr. Mukul Rohtagi, argued that the appellants (plaintiffs) had an interim order of status quo in their favour granted by the learned Trial Judge while holding that the suits are maintainable and rejected the objection to the contra by the defendants. Aggrieved by the decision of the learned Trial Judge, the defendants carried the matter in appeal before the Division Bench of the Bombay High Court. Appeals were allowed by the Division Bench, on an erroneous appreciation of the legal position regarding the maintainability of the suits. In view of the Judgement of this Court dated 30-01-2012, it is for the Division Bench of the Bombay High Court, to consider whether

the interim order granted by the learned single Judge, to maintain status quo during the pendency of the suit, is to be sustained or not. The above extracted portion of the Judgement of this Court wrongly recorded that the application of the plaintiffs (appellants herein) for interim orders is required to be considered, whereas, as a matter of fact, the appellants herein were granted interim order by the learned Trial Judge and it is the respondents herein, who are challenging the grant of such an interim order and, therefore, the Judgment of this Court dated 30-01-2012, is required to be clarified accordingly.

6. On the other hand, the learned senior counsel Mr. C.A. Sundaram, appearing for respondent, argued that in view of the fact that the appeals preferred by the respondents before the Division Bench of the Bombay High Court were allowed dismissing the suits, the interim order granted during the pendency of the suits, by the learned single Judge of the Bombay High Court, lapsed with the dismissal of the suits and, therefore, this Court, rightly, opined that the application of the plaintiffs for interim orders is required to be considered afresh.

7. We agree with the submission made by the learned senior counsel Mr. Mukul Rohtagi. The erroneous conclusion of the Division Bench cannot operate to the prejudice of the plaintiffs, who successfully demonstrated before this Court that the order of the Division Bench cannot be sustained. The settled principle of law is that the *actus curiae neminem gravabit* - 'act of the court shall not harm anybody'. In *South Eastern Coal Fields Limited Vs State of M.P.*, (2003) 8 SCC 648, this Court held:

27. That no one shall suffer for an act of the court is not a rule confined to an erroneous act of the court; the act of the court embraces within its sweep all such acts as to which the court may form an opinion in any legal proceeding that the court would not have so acted had it been correctly appraised of the facts and the law. The factor attracting applicability of the restitution is not the act of the court being wrongful or mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable has resulted in one party gaining an advantage which it would not have otherwise earned; or the other party has suffered a impoverishment which it would not have suffered but for the order of the court and the act of such party.

(Emphasis supplied)

Therefore, we are of the opinion that the matter should be considered by the Division Bench of the Bombay High Court and decide whether the interim order granted by the learned Trial Judge is sustainable.

8. The application is accordingly allowed and the Judgement of this Court dated 30-01-2012 stands modified, as indicated above.