

# BOMBAY HIGH COURT

Udyog Mandir

Vs.

Contessa Knit Wear

Civil Revn. Appln. No. 216 of 1974

(Vaidya, J.)

29.04.1974

## ORDER

**Kantawala, C.J., Tulzapurkar And Bhasme, JJ.**

1. Petitioner, Udyog Mandir Premises Co-operative Society Ltd., is a cooperative society, registered under the Maharashtra Co-operative Societies Act, 1960. On June 11, 1973, opponent No. 1, M/s. Contessa Knit Wear, filed, in the Court of Small Causes at Bombay, a declaratory suit, being suit No. 771/2858 of 1973, against Opponent No. 2 as defendant No. 1, Suresh Gurbuxani, Opponent No. 3 as defendant No. 2, Mrs. Kenu S. Gurbuxani and Opponent No. 4, as defendant No. 3, M/s. Weather Works Ltd., praying for a declaration that opponent No. 1 was the legal and lawful tenant in respect of Unit No. 3 situated on the 2nd floor in Plot No. 339 of Udyog Mandir Industrial Estate, Pitamber Lane, Mahim, Bombay-16, and was fully protected under the Bombay Rent Act notwithstanding the fact that it was inducted into the premises under an agreement of leave and licence dated July 23, 1972 for a period of 11 months, before the expiry of which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was amended by the Maharashtra Act XVIII of 1973 which came into force on February 1, 1973 Opponent No. 1 also prayed for an interim injunction restraining the defendants from disturbing its possession.

2. On August 29, 1973 the petitioner-Society, which is governed by its registered bye-laws and allotment regulations at Appendix III to the bye-laws which, *inter alia*, lays down that no allottee shall surrender or part with possession of the residential or non-residential premises or any part thereof without the previous consent in writing of the Society, filed Arbitration Case No. ABN/A/ 1609 of 1973 before the Deputy Registrar, Co-operative Societies, Bombay, against (1) M/s. Weather Works, and (2) M/s. Contessa Knitwear, opponents 1 and 4 in the above revision application. In the statement of claim made by the petitioner-Society before the District Deputy Registrar, Co-operative Societies, Bombay, under Section 91 of the Maharashtra Co-operative

Societies Act, 1960, the Society contended that the regulations bound the allottee members of the Society that M/s. Weather Works, which was opponent No. 1 in the said case, was a copartner tenant member of the Society, holding units Nos. 11 and 12 on the ground floor and Unit No. 3 on the 2nd floor, and opponent No. 2 M/s. Contessa Knit was in occupation of Unit No. 3 on the 2nd floor of the society's building as a licensee of opponent No. 1 and as such claiming through member opponent No. 1 and tenancy of opponent No. 1 was terminated for breach of Tenancy Regulations and hence the Society was entitled to recover possession from the said opponents.

3. Both the suit filed by opponent No. 1 and the claim made by the petitioner-Society are pending before the Small Causes Court at Bombay and the Officer on Special Duty respectively. Opponent No. 1 M/s. Contessa Knitwear made an application in the suit in the Small Causes Court, on February 6, 1974, for an interim injunction restraining the defendants in the suit and also the petitioner-Society, which was also a party to the said application and which was added by making an application for amendment of the plaint. On that application an injunction was ordered by a Judge of the Small Causes Court on March 25, 1974 restraining the defendants in the suit and also the Society from proceeding with Arbitration Case No. ABN/A/1609 of 1973.

4. The said order of interim injunction is challenged in the above civil revision application on the ground that the Small Causes Court, even assuming that the suit was maintainable under Section 28 of the Bombay Rent Act, had no jurisdiction to restrain the defendants from instituting or prosecuting any proceeding before the officer on Special Duty. Mr. Shastri, the learned Counsel for the petitioner-society, relied in support of his argument on Section 41 of the Specific Relief Act, 1963 which, in so far as is material, is as under :-

"41. An injunction cannot be granted ..

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;....."

Mr. Shastri submitted that the Officer on Special Duty functioning under the provisions of the Maharashtra Co-operative Societies Act, is held to be a Court by a Full Bench of this court in Misc. Civil Appln. No. 18 of 1971 decided on November 2, 1973 (reported to AIR 1975 Bombay 143) and, therefore, the Small Causes Court Judge acted without jurisdiction and contrary to the law under Section 41 (b) of the Specific Relief Act and Section 91 of the Maharashtra Co-operative Societies Act.

5. This submission must be upheld. An interim injunction can be granted to prevent an injury or multiplicity of proceedings. There cannot be any injury if proceedings go on before the Officer on Special Duty under Section 91 which are normally bound to end earlier than the suit in the Small Causes Court. The parties cannot complain of multiplicity of proceedings because there is, at present, multiplicity of judgments regarding the interpretation of the scope and ambit of Section 91 of the Maharashtra Co-operative Societies Act, 1960. In the context of this vexed

question of jurisdiction under the two special Acts, viz. Maharashtra Co-operative Societies Act, Section 91 and the Bombay Rent Act, Section 28 judicial amity and wisdom should have restrained the learned Judge of the Small Causes Court from granting such an injunction.

6. Even assuming that he had powers to grant such an injunction, he could certainly not grant an injunction having regard to the injunction of law contained in Section 41 (b) which could guide a court in dealing with interim injunction applications. A Court cannot do even temporarily what it has been prohibited by law from doing permanently.

7. Mrs. Pandit could not and rightly did not try to argue that the Officer on Special Duty was a Court subordinate to the Small Causes Court. Section 41 (b) of the Specific Relief Act prohibits the Small Causes Court from staying or interfering with any proceeding before a Court which is not subordinate to it. Under Section 56 (b) of the old Specific Relief Act, 1877, the words used were that 'an injunction cannot be granted to stay proceedings in a Court not subordinate to that from which an injunction is sought.' The slight alteration in the wording of Section 41 (b) quoted above is clearly intended to interdict every Court from restraining a person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction was sought.

8. Mrs. Pandit referred to the provisions of the amendment of the Bombay Rent Act, the judgments of this Court in Special Civil Application No. 2717 of 1970 decided on March 25, 1974 by Desai and Sawant, JJ. (reported in AIR 1975 Bombay 120) and in Special Civil Application No. 1699 of 1969 decided by Deshpande and Dudhia, JJ. on April 26, 1973 : (Reported in (1974) 76 Bom LR 718; *Deccan Merchants' Co-operative Bank Ltd. v. Dalichand Jugraj Jain*<sup>1</sup>, and *Sabharwal Bros. v. Smt. Guna Amrit Thadani*<sup>2</sup>, and contended that having regard to the amended provisions of the Bombay Rent Act and the said decisions, it is the Small Causes Court under Section 28 which has exclusive jurisdiction in the matter.

9. Mr. Shastri for the petitioner, on the other hand, relied on the judgment dated December 16, 1971 in Special Civil Application No. 1446 of 1971 decided by Deshpande J. and myself and the fact that the Supreme Court leave petition being Civil Misc. Petition No. 395 of 1972 filed against the said judgment was summarily dismissed by the Supreme Court on March 27, 1972 and contended that even having regard to all the judgments relied on by Mrs. Pandit, the present claim before the officer on Special Duty being a dispute raised by the Society against the member and a person claiming through the member for enforcing the aforesaid allotment regulations, was exclusively triable by the Officer on Special Duty.

10. I do not think that it is necessary for me, at this stage, to venture into this perplexingly never-ending question as it seems that Mr. Shastri's client has not filed its written statement in the Small Causes Court and Opponent No. 1 has filed recently its written statement before the Officer on Special Duty, because a proper decision on this question involves consideration of the bye-laws and regulations relating to the premises and the rights of the opponents vis-a-vis the petitioner. It

will depend upon whether they are premises within the meaning of the Bombay Rent Act or whether the relation between the opponents is that of tenant and licensee protected under the Bombay Rent Act. In the absence of the relevant facts and materials before this Court, at this stage, it is not possible to express any opinion with regard to the effect of the above decisions also.

11. At present the only question is whether the Judge of the Small Causes Court, even assuming that he had powers under Section 28 of the Bombay Rent Act to entertain the suit filed by opponent No. 1, had jurisdiction to restrain persons from taking recourse to determination of disputes under Section 91 of the Maharashtra Co-operative Societies Act. I have already pointed out above that the Judge has no such jurisdiction. If he passes

<sup>1</sup>(AIR 1969 SC 1320)

<sup>2</sup>(AIR 1972 SC 1893)

any such orders it will be contrary to Section 41 (b) of the Specific Relief Act, 1963 and also highly improper even on general principles which should guide Courts in granting injunctions even temporarily, particularly having regard to the fact that while the proceedings before the officer under Section 91, if uninterrupted may end within six months, a suit in the Small Causes Court has ordinarily almost a decade's life having regard to the present pattern of arrears in that Court.

12. In the result, the revision application is allowed. Rule is made absolute with costs. The order passed by the learned Judge of the Small Causes Court at Bombay is set aside.  
Revision allowed.