

## BOMBAY HIGH COURT

Krishnadevi

Vs.

Banwarilal

Civil Revn. Appln. No. 160 of 1974

(Vaidya, J.)

11.02.1975

### ORDER

**Vaidya, J.**

1. On October 5 1973, the dispute between the Highway Rose Co-operative Housing Society Ltd., who is respondent No. 3 in the above Civil Revision Application and Krishna Devi P. Gupta petitioner No. 1 on the one side and Banwarilal Tibrewala who is respondent No. 2 in the above petition on the other was referred under Sections 91 to 96 of the Maharashtra Co-operative Societies Act 1960, to the District Deputy Registrar Co-operative Societies, Bombay. In that dispute the Co-operative Society prayed for eviction of Banwarilal Tibrewala on the ground that he was an unauthorised occupant of the premises which are part of the building belonging to the Society. The dispute was in due course referred by the District Deputy Registrar to the Officer on Special Duty for adjudication. ‘

2. During the pendency of the matter before the Officer on special duty Tibrewala filed R. A. Declaratory suit stamp No. 1386 of 1974, in the Court of Small Causes, at Bombay, claiming a declaration that he was the monthly tenant of the premises in dispute. He also applied for an injunction restraining the society and Gupta from proceeding with the Arbitration Case No. ABM 1735 of 1973 before the Officer on Special duty. On that application an ad interim injunction was passed by a Judge of the Small Causes Court on February 11, 1974. The said order is challenged in the above revision application by the petitioners Krishnadevi Gupta and Manjudevi Gupta who are defendants 2 and 1 respectively in the suit in the Small Cause Court.

3. In *Udyog Mandir Premises Co-operative Society Ltd. v. M/s. Contessa Knit Wear<sup>1</sup>*, it was laid down by this Court,

"In the context of jurisdiction arising under two special Acts, viz. the Maharashtra Co-

operative Societies Act, 1960, Section 91 and the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Section 28, judicial amity and wisdom require that when a matter is pending before an officer on Special Duty under the Maharashtra Co-operative Societies Act, a Judge of the Small Cause Court should

<sup>176</sup> Bom LR 735

not grant an injunction restraining the parties from proceeding with that matter. An interim injunction can be granted to prevent an injury or multiplicity of proceedings but there cannot be any injury if proceedings go on before the officer on Special Duty as they are normally bound to end earlier than the suit in the Small Cause Court.

Even assuming that the suit is maintainable under Section 28 of the Bombay Rent Act and the Judge of the Small Cause Court has powers to grant an injunction he should not, having regard to Section 41 (b) of the Specific Relief Act, 1963 which should guide the Court in dealing with interim injunction applications, grant such an injunction." In view of the decision it is clear that the Judge of the Small Cause Court acted contrary to the decision of this Court in granting an interim injunction.

4. Section 41 (b) of the Specific Relief Act 1963, lays down that an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding in a Court not subordinate to the Court from which the injunction is sought. It is also well established that an Officer on Special Duty exercising powers under the provisions of the Maharashtra Co-operative Societies Act, is a court in the eye of law, as held by the Full Bench of this Court in *Bapusaheb Balasaheb Patil v. The State of Maharashtra*<sup>2</sup>, He is not a Court subordinate to the Small Cause Court. It is therefore patent that the learned Judge of the Small Cause Court acted without jurisdiction in ordering an ad interim injunction against the petitioners from proceeding with the case before the Officer on Special Duty.

5. Kantawala, C. J., has affirmed this view in Civil Revision Application No. 417 of 1974 on November 25, 1974 (Bom) observing as follows:

"in more than one matter I have followed the decision of Vaidya, J., referred to above i.e., (the aforesaid Udyog Mandir's case). I set aside the injunction granted by the Small Cause Court at Bombay restraining the party from proceeding with the matter before the officer on Special Duty. In view of the same position in law the interim injunction granted by the Small Cause Court at Bombay is vacated . . . ."

6. In the result, following the above decisions, I set aside the impugned order of the Small Causes Court in the present case, dated February 11, 1974, and make the rule absolute with costs.

Application allowed.

<sup>276</sup> Bom LR 455 (FB)