

(2005) 04 BOM CK 0060

In the Bombay High Court

Case No : Notice of Motion No. 828 of 2005 in Suit No. 514 of 1984

Aderbad Co-operative Hsg. Scty. Ltd.

APPELLANT

Vs

Aspi Framroze Goluwalla (Dr.) and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 6
Specific Relief Act, 1877 — Section 56
Specific Relief Act, 1963 — Section 41

Citation : (2005) 3 ALLMR 6 : (2005) 4 BomCR 73

Hon'ble Judges : Karnik D.G., J

Bench : Single Bench

Advocate : Rita Bhatia, for the Appellant; S. Shetye, Ayaz Builawalla and Gautam Panchal, instructed by Bilawala and Co., for defendant Nos. 8, 9 and 10, for the Respondent

Judgement

Karnik D.G., J.—Heard the learned Counsel for the defendant Nos. 8, 9 and 10 who have taken out this motion and the learned Counsel for the plaintiff who opposes the motion.

2. In the special general body meeting of the plaintiff's society held on 6th February, 2005 the members resolved to revoke/cancel the nominal membership of defendant Nos. 9 and 10. The plaintiff society thereafter approached the Deputy Registrar Co-operative Societies by an application u/s 35 of the Maharashtra Co-operative Societies Act, 1960 (for short the Act) for approval of the said resolution. Defendant Nos. 8, 9 and 10 have taken out this motion praying for an injunction restraining the plaintiff society from prosecuting and proceeding with the said application made by it before the Deputy Registrar.

3. Learned Counsel for the defendant Nos. 9 and 10 submits that the present suit has been filed by the plaintiff society inter alia for a declaration that the defendant Nos. 9 and 10 have procured membership of the plaintiff society by fraud and misrepresentation and a further declaration that defendant Nos. 9 and

10 are not the members of the plaintiff society and/or are liable to be expelled as such. Learned Counsel for the defendant Nos. 9 and 10 submits that since the plaintiff has asked for the relief of expulsion of defendant Nos. 9 and 10 in the suit the plaintiff society could not have passed the resolution dated 6th February, 2005 and could not have made an application u/s 35 of the Act before the Deputy Registrar. He further submits that if the injunction is not granted against the society, from pursuing the application made before the Deputy Registrar there is a possibility of conflicting decisions, one of this Court in this suit and the other of Deputy Registrar in the application made before it u/s 35 of the Act. Therefore, submits the learned Counsel an injunction should be granted restraining the plaintiff society from proceeding with the application made by it u/s 35 of the Act.

4. Learned Counsel for the plaintiff raises a preliminary objection as to the powers of a Single Judge of this Court sitting on the Original Side to grant such a relief. She submits that the Court of Deputy Registrar exercising jurisdiction u/s 35 of the Act is not subordinate to a Single Judge of this Court exercising Ordinary Original Civil Jurisdiction. Hence, u/s 41(b) of the Specific Relief Act, 1963 he has no power to grant an injunction restraining the plaintiff from prosecuting its application before the Deputy Registrar u/s 35 of the Act.

5. Learned Counsel for the parties invite my attention to the decision of the Full Bench of this Court rendered in Narayan Vithal Samant Vs. Jankibai Sitaram Samant, . In that case the point referred to the Full Bench for its determination was :

"Whether it is competent to a Single Judge of this Court exercising ordinary original civil jurisdiction of the Court to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in mofussil unless authorised so to do by rule ?"

Batchelor J., in his judgment held that a Single Judge of this Court in exercise of its Ordinary Original Civil Jurisdiction had no jurisdiction to grant such an injunction. He however, further observed that, whether substantially same result could be secured by an order impersonal restraining the plaintiff from proceeding before a Subordinate Court had not arisen for decision of the Court in that case and left that issue open. Scott C.J., Shah J. and Hayward J., agreed with Batchelor J. Macleod, J. in his separate judgment also held that a Single Judge of this Court sitting on the Original Side would have no jurisdiction to issue a prohibition to a subordinate Judge against proceeding with a suit. He however, held that a Judge, sitting singly on the Original Side may restrain a party in a suit pending before him from proceeding with a suit in subordinate Judges' Court in the mofussil. In view of the decision of the Full Bench, the position appears to me to be clear that a Single Judge of this Court sitting on the Original Side exercising Ordinary Original Civil Jurisdiction cannot stay hearing of a suit pending in a Subordinate Judge's Court. In my view, same principle would apply even to a proceeding which is pending before the Deputy Registrar of Co-operative Societies u/s 35 of the Act. The Deputy Registrar of Co-operative

Societies exercises judicial or quasi judicial powers in deciding an application u/s 35 of the Act and is not subordinate to the principal Court of Ordinary Original Civil Jurisdiction whether it be the City Civil Court or a Single Judge of this Court sitting singly on the Original Side. An appeal against an order of the Deputy Registrar of Co-operative Societies lies to the Divisional Joint Registrar u/s 152 and the order of the Joint Registrar is revisable u/s 154 of the Act before the State Government. No appeal lies against the order of the Deputy Registrar or of the appellate or revisional authority to this Court exercising Ordinary Original Civil Jurisdiction, in its Original Side.

6. Learned Advocate for the defendants however relies upon the judgment of a learned Single Judge of this Court in William Jacks and Co. (India) Ltd. Vs. Nilima Dinesh Prasad and others, . After referring to the judgment of the Full Bench in Narayan Samant v. Jankibai Samant (supra) the learned Single Judge held that the powers of the Chartered High Courts to grant an order of injunction are not limited under the provisions of the Code of Civil Procedure, 1908 and the Chartered High Courts in this country have general equitable jurisdiction to grant injunction in appropriate cases independent of the provisions of the Code of Civil Procedure.

This proposition cannot be doubted. However, the learned Judge further held that u/s 6 of the Presidency Small Causes Court Act, 1882, Small Causes, Court at Bombay would be deemed to be a Court subordinate to the High Court and the High Court had the jurisdiction, both the on the Original Side as well as a on the Appellate Side, to grant an injunction restraining a party to a suit from proceeding with its suit in the Small Causes Court. With great respect I am unable to share this view for the reasons mentioned below:

7. In Narayan Samant v. Jankibai Samant the majority of the Judges of the Full Bench did not consider the question whether a Single Judge of this Court sitting on the Original Side can grant an injunction to a party in personam restraining him from proceeding with the suit in a subordinate Court. One learned Judge of the Bench however held that such an injunction can be granted. This was because the provisions of Section 56(b) of The Specific Relief Act, 1872 as were then in force only prescribed that the proceedings in a Court not subordinate to that from which stay was sought cannot be stayed. Section 56 of the Old Specific Relief Act did not prevent a Court from granting an injunction in personam to a party before a subordinate Court from proceeding with the suit. This loophole has been plugged in the Specific Relief Act, 1963. Clause (b) of Section 41 of the Specific Relief Act provides that no injunction can be granted to restrain a person from instituting or prosecuting any proceeding in Court not subordinate to that from which the injunction is sought. Now there is no power in a Court to restrain a person by an injunction in personam from prosecuting any proceedings pending before a Court not subordinate to it. In my view, the Court of Small Causes, though subordinate to the High Court and a Bench of the High Court sitting on the Appellate Side is not subordinate to a Single Bench of this Court on

the Original Side exercising Ordinary Original Civil Jurisdiction, which simply is a Principal Civil Court of Original Jurisdiction. Hence, in my view the decision of the Single Judge in William Jacks & Co. v. Nilima Dinesh Prasad requires reconsideration.

In my view it would be appropriate that the matter be referred to larger Bench for decision on the following issues :

- i) Whether the Deputy Registrar of Co-operative Societies hearing an application u/s 35 of the Maharashtra Co-operative Societies Act, 1960 can be regarded as a Court for the purpose of Section 41(b) of the Specific Relief Act ?
- ii) Whether a Single Judge of this Court sitting on the Original Side exercising Ordinary Original Civil Jurisdiction would have a power to grant an injunction restraining the Deputy Registrar of Co-operative Societies from hearing an application u/s 35 of the Maharashtra Co-operative Societies Act, 1960 ?
- iii) Whether injunction can be granted by a Single Judge of this Court sitting on the Original Side and exercising Ordinary Original Civil Jurisdiction, to a party to a suit before it restraining it from prosecuting an application u/s 35 of the Maharashtra Co-operative Societies Act, 1960 before the Deputy Registrar of Co-operative Societies?

The papers may be placed before the Hon"ble the Chief Justice for appropriate orders.