

(1983) 11 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 373 of 1977

Bhabdara Zilla Sahakari Shetki Kharedi Vikri Samiti Ltd.

APPELLANT

Vs

Damodar and Others

RESPONDENT

Date of Decision : 14-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1984 Bom 362

Hon'ble Judges : Paunikar, J

Bench : Single Bench

Advocate : A. Shelat, for the Appellant;

Judgement

1. The petitioner (disputant society) has filed this writ petition against the judgement dated 7-10-1976 passed by the Maharashtra Sate Co-operative Appellate Court in Appeal No. 460 of 1973 arising out of the dispute No. 7 of 1973 decided on 30-4-1973 by Officer on Special Duty, Nominee of the District Deputy Registrar, Co-operative Societies.

2. The petitioner filed a suit against respondent 1 and 2 . It is stated that respondent 1 and 2 served with the petitioner as a cashier since 1947. It is stated that respondent 1 d defalcated funds of the society to the extent of Rs. 26.302,50ps. According to the to the petitioner, respondent 1 used this amount for his personal puprpsoe. It is stated that his defalcation was detected sometime before 29-6-1971, when respondent 1 disclosed to the office bearers of the petitioner society that the actual cash in hand was short by Rs. 26.00|- It is stated that this defalcation this amount even long before that. However, many times he used to bring amount from his friend and at the time of audit he used to show that cash balance was corect. After the auditor completed audits he used to return the amount to those from whom he brought. It is further stated that lastly it was not possible for him to manage the affairs as aforesaid. It is further sate that the office bears of the petitioner society agreed to take the sale deed of respondent it land at the rate of Rs. 26,302 50 as a repayment of the defalcated

amount. After the sale deed was executed in favour of the petitioner according to the petitioner, there was an oral agreement between the petitioner and respondent 1 to the effect that respondent 1 would repurchase the lands from the petitioner along with interest at Re/- per cent per month and if he failed to repurchase he would find out some other purchaser for sufficient amount to cover the disputant's claim with interest. It is the case of the petitioner that respondent 1 did not pay this amount within one year as per agreement. Respondent 1 could not manage to sell the land to some other person for realising the land to some other person for realising the amount. The property purchased by the petitioner was under a sale deed executed by respondent 1 in favour of the petitioner, respondent 1 put the petitioner in actual and physical possession of the land sold by respondent 1. Thus, the petitioner was in possession of the land. It is also the case of the petitioner that after the petitioner had taken possession of the land, the petitioner cultivated the land for some year through its servants and reaped the benefits of the property. The petitioner further states that after sometime respondent 1 obstructed the petitioner's possession of the land and he was not allowing the petitioner under the sale deed. Hence the petitioner filed a dispute before the Registrar, Co-operative Societies, Bhandara under Sections 91 and 93, Maharashtra Co-operative Societies Act, 1960 (in "p" Form). The petitioner prayed for a decree against respondent 1 and 2 for confirming the possession of the land in favour of the petitioner and for injunction against respondent 1 restraining him from disturbing the possession of the petitioner. In the alternative, the petitioner and for injunction against respondent 1 restraining him from disturbing the possession of the petitioner. In the alternative the petitioner (disputant) prayed that in case it is held that the petitioner should be put in possession of the suit lands, The petitioner also prayed that a decree directing the sale of the disputed land for realising the amount of Rs. 31,204,96 outstanding due from respondent 1 with interest be passed against him and if the sale proceeds of this land, came less than the amount stated above, a decree should be passed against respondent 1 for the amount being remaining due and the same should be realised from respondent 1 as a partly because he was a of respondent 1 to the extent of Rs 2,000/-

3. The respondent filed the written statement and amongst other pleas they mainly contended that the dispute was not maintainable under S. 91, Maharashtra Co-operative Societies Act. In fact according to them, there was no dispute at all and, therefore, they requested that the preliminary issues be framed and the question of jurisdiction be decided as it goes to the very root of the case. They also denied the claim of the petitioner society on merits.

4. After through the pleading of the parties the learned Officer on special Duty in Arbitration Case No. 7/1973, vide award dated 30th April, 1973 held that dispute filed by the petitioner against respondents 1 and 2 is not a dispute triable u/s 91, Maharashtra Co-operative Societies Act, and hence the dispute be returned back to the petitioner society for filing before the appropriate Court. The learned Officer

on Special Duty also held that the petitioner in fact recovered the defalcated amount from respondent 1 and so far as the business of the petitioner society with respondent 1 is concerned, it was not subsisting and the dispute, which is alleged is altogether a different dispute extraneous to the business and of the petitioner 1 with respondent 1 is concerned it was not subsisting and the dispute, which is alleged is altogether a different dispute extraneous to the business of the petitioner and would not come within the ambit of dispute touching and scope of S. 91, Maharashtra Co-operative Societies Act. The learned Officer on Special Duty relied on ruling reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, In this ruling while discussing the question whether the dispute touches the assets of the business of the society, their Lordship of the Supreme Court remarked as follows (at p. 1326) :-

"The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns building and lets out parts of the building which it does not require of its own purpose it cannot be said that letting out of those parts is part of the business of a society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business".

5. In the instant case it was held that it is not the business of the society to purchase the lands. Consequently, the Officer of Special Duty returned the dispute to the petitioner for presentation to proper Court the vide his award dated 30th April 1973. The petitioner preferred an appeal against the said award to the Maharashtra State Co-operative Appellate Court vide Appeal No. 460 of 1973 and this Appellate Court vide its judgement dated 7-10-1976, dismissed the appeal and confirmed the order passed by the Officer on special Duty. Both these orders are now challenged in this writ petition by the petitioner.

6. The learned counsel for the petitioner society Shri Shelat, Advocate contended before the that in view of Explanation to Section 91 the dispute may be touching to the constitution election of the office bearers, the conduct of general meetings, management or business of the society. According to him, there may be any dispute between the society and its servants and any dispute is covered under explanation and hence the Officer on Special Duty has certainly jurisdiction to entertain the dispute filed by the petitioner. It is not possible to accept his submission. The petitioner case is that "respondent 1 is a cashier of the petitioner and he had defalcated the amount to the extent mentioned by the petitioner, and the petitioner and he had in fact found out a way the defalcated amount and the petitioner took sale deed to the extent of the defalcated amount from respondent 1. Consequently, the amount of the petitioner stands satisfied on taking a sale deed from respondent 1. Thereafter the petitioner alleges agreement of reconveyance disturbance is possession, agreement of to sell the suit lands for recovery of the amount of the petitioner for recovery of any balance left from

out of the sale proceeds personally from respondents 1 and 2 also for injunction. For deciding such an issue, for which does not relate to the business of the petitioner the proper forum would not be a Co-operative court but a Civil Court. The dispute contemplated u/s 91 is a dispute touching the constitution, election of the office bearers conduct of general meeting, the management or the business of the society and the explanation mentioning dispute will obviously mean that such a dispute will be dispute touching the constitution , election of the officer bearer, conduct of general meeting, management or business of the society. In my opinion the claims mentioned into sub-clauses have to be touching the constitution, election of the office bearers, conduct of general meeting, management or business of the society. Relying upon the principle laid down in the aforesaid Supreme Court Ruling. I also hold that the reliefs claimed by the petitioner in dispute on the basis of the averments in the dispute do not concern the business of the society. It does not obviously come within the ambit of s. 91 Explanation 2. Consequently , the finding arrived at by the Officer on Special Duty as well as Maharashtra State Co-operative Appellate Court are perfectly just and legal. The Officer on special Duty has no jurisdiction to entertain the dispute under S. 91, Maharashtra Co-operative Societies Act. Both the orders passed by the Officer on Special Duty and the Appellate Court therefore, deserve to be main and the need no interference.

7. The petition is without substance and deserve to be dismissed and it is hereby dismissed . The rule is thus discharged with no order as to costs.

8. Petition dismissed.