

**(1975) 09 DEL CK 0001**

**In the Delhi High Court**

**Case No : Civil Revn. No. 509 of 1974**

Chander Nagar Co-operative House Building Society Ltd. and  
Another

APPELLANT

Vs

Ashok Ohri

RESPONDENT

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**Date of Decision : 18-09-1975**

**Acts Referred:**

**Citation : AIR 1976 Delhi 299**

**Hon'ble Judges : A.B. Rohtagi, J**

**Bench : Single Bench**

**Advocate : R.P. Bansal, for the Appellant; D.R. Dhamija, for the Respondent**

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## **Judgement**

1. This is a revision against the order of the subordinate judge dated 19-8-1974.
2. The facts are these. The plaintiff claims to be a member of Chander Nagar Co-operative House Building Society Limited. He has paid them Rupees 12,000/- for allotment of a plot to him.
3. The society has 126 plots in number. They have to be allotted to 126 members. The society issued a circular to some members of the society and they were informed that plots will be allotted to them by draw of lots on January 4, 1974. Apparently the plaintiff did not receive any such notice from the society. Therefore he said that the society has no right to issue such a circular or to allot the plots by draw of lots. He came to know of the circular before the institution of the suit and protested that this manner of allotment of plots to some members at one time and to others later is illegal.
4. The plaintiff Therefore brought a suit in January 1974 making these allegations against the society and its secretary. He called their action as illegal. He sought a permanent injunction restraining them from allotting the plots of the society in an "illegal and arbitrary manner.
5. The society opposed the suit. It was said that the Civil Court had no

jurisdiction to try the suit, The trial Judge framed a preliminary issue:

Whether the court has no jurisdiction to try the suit?

The finding of the subordinate Judge on this issue was that the suit was maintainable and the court has jurisdiction to try the suit. This was her decision. Against this order the society has come in revision.

6. Section 60 of Delhi Co-operative Societies Act 1972 (Act 35 of 1972) in so far as it is material reads:

"(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of, any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society, such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely: -

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a society other than a society mentioned in sub-section (1) of Section 31.

(3) If any question arises whether a dispute referred to the Registrar under this

section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

7. This section provides that certain disputes such as are mentioned in the section shall be referred to the Registrar for his decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

8. In order to decide whether a suit is barred by reason of Section 60 it is necessary to determine at the very outset two things. Firstly, it has to be seen who are the parties to the dispute. Secondly the nature of the dispute must be ascertained. Section 60 (1) provides that if the dispute is amongst the classes of persons as are mentioned in (a) to (d) it will be decided by the Registrar. The plaintiff claims to be a member of the society, He has brought a suit against the society. Therefore, his case would fall u/s 60 (1) (b).

9. The second question is whether the dispute raised by the plaintiff in the plaint is a dispute such as is outside the jurisdiction of the civil Courts. The relevant words used in the section are any dispute touching the constitution, management or the business of a co-operative society other than a dispute Regarding disciplinary action taken by the society or by its committee against the paid employees of the society."

10. The sole question for determination is whether the dispute raised by the plaintiff is one touching the constitution, management or the business of the society. What is a dispute touching the constitution, management or business of a co-operative society is defined in subsection (2) of Section 60.

11. If it is a dispute touching the constitution, management or the business of a co-operative society the dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

12. Sub-section (3) says that:

"If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

13. The word "referred" is important. But before a matter is referred two conditions have to be satisfied:

(1) That the dispute must be one touching the constitution, management or business of a society other than a dispute regarding disciplinary action taken by the society against a paid servant; and

(2) That the dispute must be one involving parties who are among those mentioned in the section: (See- *Nayagarh Co-operative Central Bank Ltd. Vs. Shri Narayana Rath and Others*, .

14. It is not disputed that the plaintiff's suit does not fall within any of the three categories mentioned in clauses (a) to (c) of sub-section (2).

15. The counsel for the petitioner submits that sub-section (2) is merely illustrative and in order to determine whether the dispute can be entertained by a Civil Court we have only to look to the opening words of the section, namely, "touching the constitution, management or the business of a co-operative society" where no such limitation has been placed. In other words his submission is that the definition given in sub-section (2) is not exhaustive. I do not agree. In my opinion the definition given in sub-section (2) is not illustrative. It is exhaustive.

16. The legislature has used the words "the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society." I underline and emphasise the words "shall be deemed to be disputes". The legislature has left us in no doubt that these are the only disputes which can be said to be touching the constitution, management or the business of a co-operative society. The legislature has not used the word "also". Nor does the legislature say, "shall be deemed to include". Without reading these two words "also" or "include" into the section the counsel for the society cannot build an acceptable argument.

17. It is a settled principle of statutory construction that no words can be added to the section. The section must be construed according to its plain meaning without any addition or substitution. To me it appears that the generality of the words "touching the constitution, management or the business" has been severely cut down by the legislature by setting out in sub-section (2) the nature of the disputes, which will fall within these three expressions. The width and the ambit of these three expressions is now limited by what the legislature has said in sub-section (2). I cannot therefore, accept the reasoning that the words "touching the constitution, management or the business" are without limitation.

18. It is well settled that a clause which takes away the jurisdiction of civil court must be strictly construed. (See Abdul Waheed Khan Vs. Bhawani and Others, ). Every presumption should be made in favor of the jurisdiction of a civil court. In other words, the exclusion of jurisdiction of civil courts is not to be readily inferred, such exclusion must be either explicitly expressed or clearly implied. (See AIR 1940 105 (Privy Council) and Magiti Sasamal Vs. Pandab Bissoi, ). The subject's recourse to the courts for the determination of his rights is not to be excluded except by clear words.

19. Applying this rule of construction it must be held that the legislature has ousted the jurisdiction of the Civil Courts only in respect of disputes, which are specified in sub-section (2) and to which the parties must be such as are mentioned in sub-section (1).

20. For these reasons I endorse the decision of the trial Judge, I dismiss the revision. There will however be no order as to costs

21. Revision dismissed.