

(2002) 07 CAL CK 0005
In the Calcutta High Court
Case No : A.F.O.D.T. No. 3724 of 1999

Smt. Sisir Kana Guha and others

APPELLANT

Vs

Ayakar Grihanirman Samabaya Samity Ltd. and another

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : AIR 2002 Cal 89

Hon'ble Judges : Joytosh Banerjee, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Anupam Chatterjee and Sabyasachi Bhattacharyya, for the Appellant; Murari Mohan Das and Kamal Krishna Pathak, for the Respondent

Final Decision : Allowed

Judgement

Dilip Kumar Seth, J.—This appeal is directed against order dated 1st of September, 1999, rejecting the plaint, and the decree passed by the learned Assistant District Judge, 5th Court, Alipore, in Title Suit No. 218 of 1995.

Facts:

2. The appellant as plaintiff has filed a suit being Title Suit No. 218 of 1995, in the 5th Court of Assistant District Judge, Alipore, for specific performance of a contract. The plaintiffs' case, inter alia, was that the plaintiff No. 1 had entered into an agreement for sale with the defendant Nos. 1 and 2, who are, admittedly, Housing Co-operative Societies. It was alleged that in 1970, the plaintiff No. 1 had sold 4.22 acres of land to the defendant Nos. 1 and 2 for valuable consideration. By an agreement for sale dated 19th May, 1971 registered on 20th May, 1971, the defendants agreed to sale the suit property to the plaintiff No. 1 or her nominees for the consideration mentioned therein. Various terms of the agreement were referred to. It was pointed out that 14 Cottahs of developed land was to be sold to the plaintiff or her nominees before distribution of plots among the members within the scheme of the Township development whereof

was undertaken by the said defendants. Though, the plaintiffs had paid almost the entire consideration and were always ready and willing but the defendants had failed and neglected to transfer the property, though, at one point of time, they had agreed to grant those plots on permanent lease instead of sale in respect of the plots Nos. L-1, L-2, L-18 and L-19 respectively as shown in the development plan. In the schedule, the properties were described as respective plots together with easement right to paths, passage, roadways, watercourses, drains, sewers, electric lines etc. shown in the layout plan of the respective plots.

2.1 The defendants had entered appearance and filed their Joint written statement. They had taken a ground as to the maintainability of the suit before a Civil Court, apart from various other objections raised therein. Issues were framed. The suit was ripe for peremptory hearing. At this stage, the defendants had filed an application under Order 7, Rule 11 read with Section 9 of the CPC (CPC). The plaintiffs had filed its objection contending that the contract is independent of the object of the Co-operative Housing Society and is not concerned with the business or related to the affairs of the societies. This application was allowed by an order dated 1st of September, 1999 rejecting the plaint. It is against this order this appeal has been filed.

Submission on behalf of the Appellants:

3. Mr. Anupam Chatterjee, learned Counsel for the appellants, submits that the defendants are admittedly Co-operative Housing Societies within the meaning of the definition given in Section 2(18) of the West Bengal Co-operative Societies Act, 1983 (1983 Act). The object of such society is to provide to its members with dwelling house, apartment or land for construction of dwelling houses or apartments or maintenance of common services in connection therewith and includes a federation of such societies. Therefore, an agreement for sale of such land to a person, who is not a member of the society, is not a transaction within the object of the society and as such does not form a dispute within the meaning of Section 95 of the 1983 Act. Unless it is a dispute concerning the business of the co-operative society, the same cannot be subject-matter of a reference u/s 96 of the 1983 Act, Therefore, a civil suit outside the scope of Section 95 cannot be hit by the bar of jurisdiction of the Civil Court provided u/s 134 of the said Act.

3.1 In order to decide a question under Order 7, Rule 11, C.P.C., the Court has to confine its consideration only on the averments made in the plaint. The Court cannot look into any other material. According to him, the averments made in the plaint do not ex facie disclose or show that the suit is barred by law being hit by the mischief of Section 134 of the 1983 Act. Therefore, Order 7, Rule 11, C.P.C. cannot be attracted. Inasmuch as, in order to determine the question, the Court has to look into some other materials as to whether the transaction is a part of the business of the co-operative society, for which reference is to be made to the object and Bye-laws of the societies. Therefore, it can be decided as a preliminary issue and not otherwise.

3.2 The provisions of Order 7. Rule 11, C.P.C. can be applied only at the admission stage, it does not apply at a stage after the written statement is filed and issues are framed. Once the issues are framed, such a question is to be gone into as a preliminary issue and not otherwise.

3.3 He then contends that assuming but not admitting, the Court finds that its jurisdiction is barred, then instead of rejecting the plaint, the Court has a duty to return the plaint for presentation before the appropriate Court. According to him, the Registrar empowered u/s 96 is a Court, since as such Registrar when he settles a dispute, he acts as a Civil Court. It was so held in various decisions that the Registrar is a Court while dealing with a dispute. Therefore, by reason of Order 7, Rule 10, C.P.C., the plaint should be returned instead of its rejection. According to him, the word "Court" has not been defined either in the Code or in the General Clauses Act. It does not mean a Court established under the Bengal, Agra, Assam Civil Courts Act or a Court where proceedings are governed by the provisions of the Code. It Includes a Court established by special statute when discharging its Jurisdiction to decide a civil dispute capable of being a civil litigation, as is understood u/s 9 of the Code. The Registrar is vested with the power to decide the dispute finally, which has the effect of a decree, in view of Rule 179 of the West Bengal Co-operative Societies Rules, 1987 read with Section 98 of the 1983 Act. It has also the trappings of a Court in view of the fact that it is clothed with the jurisdiction of a Civil Court In respect of certain matters as conferred on it u/s 125 of the 1983 Act. Therefore, instead of rejecting the plaint, it ought to have been returned to the plaintiffs for being presented before the Registrar of Co-operative Societies, a Court within the meaning of Order 7, Rule 10.

3.4 In order to be a transaction concerning the business of the society, such transaction must be authorized by the primary object of the society. Unless it is so authorized, the transaction does not come within the purview of business of the society. In support he relies on the decision in Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others, .

3.5 Mr. Chatterjee had also contended that in order to decide a suit being in the nature of specific performance of contract, requires an expertise of a Civil Court, which the Registrar or Arbitrator lacks and that such a relief cannot be had within the scope and ambit of a proceeding u/s 96 of the 1983 Act.

3.6 Mr. Chatterjee relied on the decisions in Jayanta Banerjee v. Beldanga Block 1, Co-operative Marketing Society, 1983 (87) Cal WN 638 , Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, ; Deccan Merchant Co-operative Bank Limited v. M/s. Dalichand Jugraj Jain, AIR 1969 SC 2320; National Agricultural Co-operative Marketing Federation of India Limited v. Ram Narayan Tech Chand. 1988 (1) Cal HN 441 ; Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, and Rupchand Rajaram Shah Vs. Janata Consumers Co-operative Society Ltd. and Others, , in support of his contentions.

3.7 For all these reasons, the appeal should be allowed and the order appealed against should be set aside.

Submission on behalf of the Respondents:

4. Mr. Murari Mohan Das, learned Counsel for the respondents, on the other hand, contended that Order 7, Rule 11, C.P.C. can be invoked at any stage of the suit even after the issues are framed. He relied on the decision in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, .

4.1 He then contends that the Registrar of Co-operative Societies is a Court for limited purpose. But it is not a Court contemplated within the provisions of the Code of Civil Procedure. The CPC as such does not apply to a proceeding contemplated u/s 96 of the 1983 Act. Chapter XI of the 1987 Rules provides for the procedure governing settlement of disputes. Only for limited purpose, as contemplated u/s 125, the Registrar might have some trappings of the Court. But by no stretch of imagination, the provisions of the CPC can be applied in respect of a reference contemplated u/s 96 of the 1983 Act. Therefore, Order 7, Rule 10, C.P.C. cannot be attracted. According to him, unless CPC applies to the Court to which the plaint is to be presented on being returned Rule 10 cannot be attracted. Such Court must be a Court to which the CPC applies.

4.2 He then contended that Order 7, Rule 10 and Order 7, Rule 11, C.P.C. are mutually exclusive of each other. Order 7, Rule 10, C.P.C. does not specify any ground on which the plaint is to be returned. Whereas Order 7, Rule 11, C.P.C. provides for clear specific grounds on which the plaint is to be rejected. When a particular provision postulates a particular purpose in particular circumstances, in that event, when such circumstances are attracted, another provision cannot be attracted to avoid the mischief of Order 7, Rule 11, C.P.C. According to him, as soon the conditions contained in Order 7, Rule 11, C.P.C. are satisfied, the Court has no alternative but to reject the plaint. It cannot return it.

4.3 The next contention is that Section 2, sub-section (18) of 1983 Act includes maintenance of common services in connection with the lands for construction of dwelling house or apartment or dwelling houses or apartments. As soon the object of the society to provide dwelling houses to its members is undertaken and in case some lands are sold as part of its transaction in acquiring the land, such transaction do form part of the business of the society. Inasmuch as, in order to provide land to its members, the society has to acquire land from third party, who may not be its members. Such acquisition of land is for the purpose of fulfilling its objects. If after development of such acquired land, some part is agreed to be sold to such person from whom such land was acquired, then such agreement for sale forms part of the same transaction in relation to its acquisition and as such it forms part of the transaction within the object of the society.

4.4 He also contends that when the object is to provide land to its members and in furtherance of such object, land is acquired and developed and such developed

lands are disposed of, the same also do form part of the object of the society and as such a business, which comes within the dispute contemplated u/s 95 of the said Act.

4.5 He points out from various averments made in the plaint that on the basis thereof, it is crystal clear that the transaction do form part of the business of the society and as such is a dispute within the meaning of Section 95 of the 1983 Act hit by mischief of Section 134 of the said Act.

4.6 Mr. Das also relied on *Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others*, ; *Jessop's Co-operative Society Ltd. and Others Vs. Registrar of Co-operative Societies, W.B. and Others*, ; *Anwesh Sarkar v. Registrar of Co-operative Society*, 1980 (1) Cal HN 514 and *Registrar, Co-operative Societies. Registrar, Cooperative Societies, W.B. Vs. Krishna Kumar Singhania and Others*, ; *Azhar Hussain Vs. Rajiv Gandhi*, in support of his contention and contended that the appeal should be dismissed.

Can plaint be rejected under Order 7, Rule 11, C.P.C. after issues are framed:

5. Order 7, Rule 10, C.P.C. prescribes that the plaint can be returned at any stage. Whereas Order 7, Rule 11, C.P.C. omits the expression "at any stage". But omission of the expression "at any stage" will not preclude the Court from rejecting a plaint at any stage of the suit. It is immaterial whether the written statement has been filed or issues have been framed. Inasmuch as, Order 7, Rule 11, C.P.C. provides four grounds on which the plaint is to be rejected. Whenever the Court comes to the conclusion that any of these grounds are fulfilled, then Court has no alternative but to reject the plaint irrespective of the stage of the suit at which such conclusion is arrived at. The framing of issues does not postulate that despite fulfilment of any of the conditions provided in Order 7, Rule 11, C.P.C, the same is to be decided as a preliminary issue or as an issue in the suit. Inasmuch as, Order 7, Rule 11, C.P.C. postulates rejection of a plaint on the contemplation of any of the conditions provided therein on the basis of the averments made in the plaint itself, which does not require any determination of any issue or trial.

5.1 Determination of a preliminary issue is a determination of an issue. An issue, in terms of Order 14, Rule 1, C.P.C, arises when a material proposition of law is affirmed by one party and denied by the other. Material propositions of law and fact are those alleged by the plaintiffs to establish the right to sue or by the defendant to constitute the defence. Each proposition affirmed by one denied by other form the subject of distinct issue. There are two kinds of issue: one of law other of fact. Order 7, Rule 11, C.P.C. is based on the averments made in the plaint. It does not require any denial or assertion. It is a duty of the Court to assert it from the averments made in the plaint suo motu or otherwise. It is not necessary to frame any issue therefor.

5.2 Inasmuch as, as rightly contended both by Mr. Chatterjee and by Mr. Das that the issue with regard to Rule 11 has to be determined on the basis of the

averment made in the plaint alone. Court is not supposed to look into any other material for such purpose and as such there is no utility of occupying Court's time in deciding the question as an issue in the suit and keeping the suit alive. The Apex Court in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, , had taken the view that when the ingredients of Order 7, Rule 11, C.P.C. is satisfied, the plaint is to be rejected even if written statement is filed or issues are framed.

5.3 Mr. Chatterjee had relied on *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, , to support his contention with regard to return of the plaint where the Civil Court finds that it has no jurisdiction of the subject-matter of the suit. In paragraph 13 of the said decision, the Apex Court had taken such a view while dealing with a question u/s 9 of the Code of Civil Procedure. But the said decision is distinguishable in view of the fact that the suit was not cognizable by a Civil Court but by a Revenue Court in view of special provision contained in Section 189 of Madras Estates Land Act. In the said decision, it was held that when the Court does not have jurisdiction, it cannot decide the case on merit. It has to return the same for presentation before an appropriate Court. In that case it was a Revenue Court to which the plaint could have been returned and as such Order 7, Rule 10 could be attracted since Revenue Court has been recognized as Courts in Section 5, C.P.C. and C.P.C. is applicable to such Courts where the special enactment applicable to such Court is silent unless by notification in the Official Gazette, the Government declares expressly the provisions of the Code inapplicable to such Courts or provisions which are expressly applicable to such Courts. Therefore, the said decision does not help us In the present case. But that is a question, which can be gone into if the question is determined in respect of an issue with regard to jurisdiction but not while rejecting a plaint solely on the basis of averments made in the plaint under Order 7, Rule 11(d). C.P.C. The said decision was not dealing with a case under Order 7, Rule 11(d), C.P.C. It was dealing with a case, which was held to be not maintainable in

the hearing of an issue with regard to jurisdiction, in which case the Court can resort to Order 7, Rule 10. It cannot resort to Order 7, Rule 11 when such question is to be decided as an issue in aid of certain other materials, but not on the basis of the averments made in the plaint alone. Therefore, the said decision is distinguishable and does not help us in the present case.

5.4 Mr. Das relied on *Azhar Hussain Vs. Rajiv Gandhi*,] wherein it was held that if it is found that the plaint is liable to be rejected under Order 7, Rule 11, it is not necessary to wait for evidence. But the fact remains that such jurisdiction can be exercised even at the threshold or afterwards, but only on the basis of the averments made in the plaint. If it discloses that it is otherwise barred by any law for being tried by a Civil Court without reference to any other materials. As discussed above, this decision also does not help us in the present case where the averment made in the plaint does not lead us to conclusively hold that the

transaction concerns the business or relates to the affairs of the society. For the same reason as discussed above, this decision also does not help us. Reliance placed by Mr. Das on Registrar, Co-operative Societies, Registrar, Cooperative Societies, W.B. Vs. Krishna Kumar Singhania and Others, where it was held that the Co-operative Societies Act is a complete Code in itself is wholly misplaced.

Are Order 1, Rule 11 and Order 7, Rule 10, C.P.C. mutually exclusive ?:

6. Order 7, Rule 10, C.P.C. prescribes return of plaint. It does not specify any" ground on which plaint is to be returned. Rule 11 immediately following provides for rejection of plaint on four conditions. If we examine the conditions provided in Rule 11, it would lead us to conclude whether Rule 10 and Rule 11 are mutually exclusive of each other.

6.1 Order 7, Rule 11, C.P.C. provides that the plaint shall be rejected on the cases mentioned thereunder. It uses the expression "shall be rejected". It seems to be mandatory. That the provision is mandatory is apparent from the conditions provided in Rule 11. (1) Clause (a) provides for rejection where the plaint does not disclose a cause of action. If the plaint does not disclose a cause of action, there is no scope for return of the plaint under Rule 10. Therefore, a case that comes within clause (a) of Rule 11 is a case, which cannot come within the purview of Rule 10 and as such it is mutually exclusive of Rule 10. (2) If the relief claimed in the plaint is under-valued and the Court requires the plaintiff to correct the valuation within the time fixed by it and the plaintiff fails to correct it within the time fixed, then the plaint is to be rejected. In such a case also the plaint cannot be returned for being presented to any other Court. As such Rule 10 cannot have any application in a case covered under clause (b). This is also mutually exclusive of Rule 10. (3) Clause (c) deals with cases where the relief claimed has been properly valued but the plaint is written upon paper insufficiently stamped and the Court requires the plaintiff to supply the requisite stamp paper within the time fixed by it, and the plaintiff fails to do so, the plaint is to be rejected. In such a case, as well, the plaint cannot be returned for being presented to appropriate Court. Inasmuch as, clauses (a), (b) and (c) does not contemplate a case with regard to the jurisdiction of the Court or other inability or incapacity of the Court to decide the suit. These are cases where the Courts have jurisdiction but because of certain infirmities in the plaint, it cannot entertain the suit and the plaint is to be rejected. None of these three cases could come within the purview of Rule 10 and as such are equally mutually exclusive of Rule 10.

6.2 Clause (d) deals with cases where from the statement of the plaint, it appears that the suit is barred by any law. In such a case, the plaint is to be rejected in view of Order 7, Rule 11, C.P.C. In this case in view of specific bar, the Court cannot assume jurisdiction. If it is a case of limitation, then the plaint cannot be returned under Rule 10. Similar such cases may arise where the jurisdiction of the Civil Court is expressly or impliedly barred in view of some special statute, then also the plaint cannot be returned under Rule 10, C.P.C. If it

cannot be returned in some cases, then can it be said that It can be returned in some other cases? To our mind, it cannot be. If on the averment made in the plaint, it appears that the suit is barred by any law before the Civil Court, then it cannot resort to Rule 10 for return of the plain. In view of the intention pursuant to which Rule 11 was enacted. Rule 13 has been incorporated. Inasmuch as, Order 7, Rule 13, C.P.C. enables the plaintiff to present a fresh plaint in respect of the same cause of action after the rejection of a plaint which on its own force does not stand in the way.

6.3 As discussed above, when a case falls under Order 7, Rule 11, the plaint is to be rejected unless, in respect of cases covered by clauses (b) and (c), the defects are removed. Failure to remove the defect in terms of clauses (b) and (c) also entail rejection of the plaint. Therefore, when a case is hit by Order 7, Rule 11, the Court has no alternative but to reject the plaint. It cannot return the same for being presented to some other Court. But, in a case where clause (b) of Rule 11 is attracted if upon curing the defect. If the valuation exceeds the Jurisdiction of the Court, then it comes within the ambit of Rule 10. But not in a case when defects are not removed. Thus, it might be altogether a different proposition.

Is ground of limitation a factor for resorting to Order 7, Rule 10 instead of Order 7, Rule 11?:

7. Mr. Chatterjee contended that in such case he will be prejudiced because of the limitation. According to him, by reason of, such limitation, he will be precluded from pursuing his remedy afresh. But, this contention is wholly misplaced. Inasmuch as Order 7, Rule 13 C.P.C. prescribes presentation of a fresh plaint after rejection under Rule 11. In such a case, aid of Section 14 of the Limitation Act is available which applies to prosecution of a suit before any forum, which is, otherwise, precluded from entertaining the suit on account of defect of jurisdiction or other causes of like nature. Section 5 of the Limitation Act may not apply in respect of filing of a suit. But in this case, admittedly, it would be a reference u/s 96 of the 1983 Act for which sub-section (3) of Section 95 of 1983 Act prescribes provision for condonation of delay. A proceeding u/s 96 of 1983 Act is not a suit excluding application of Section 5 of the Limitation Act. That apart this Court in National Agricultural Co-operative Marketing Federation of India Limited v. Ram Narayan Tech Chand 1988 (1) Cal HN 441, has held that the Limitation Act has application in a proceeding u/s 96 of 1983 Act before the Registrar.

7.1 But, then sub-section (3) of Section 95 of 1983 Act itself provides for condonation of delay for which aid of Section 5 of the Limitation Act may not be necessary. Or, in other words, it may be argued that by reason of sub-section (3) of Section 95 of the 1983 Act, the principle of Section 5 of the Limitation Act has been incorporated in the Act itself. We may also beneficially refer, for the purpose of this proposition, to Rupchand Rajaram Shah Vs. Janata Consumers Co-operative Society Ltd. and Others, . At the same time, there would be no

difficulty in obtaining aid of Section 14 of the Limitation Act within the scope of Section 95(3) of 1983 Act. Thus, this contention of Mr. Chatterjee does not cut any ice.

Meaning of expression "Court" in Order 7, Rule 10, C.P.C.:

8. Mr. Chatterjee contended that Order 7, Rule 10, C.P.C, on the other hand, deals with return of the plaint to be presented to the Court in which the suit should have been instituted. According to him, the Court should be a Court, which can entertain such plaint as it is, viz: a Court within the meaning of C.P.C. and governed by the procedure provided in C.P.C. It does not include a Court created by special statute where C.P.C. has no application, even though such Court has the trappings of a Civil Court.

8.1 The expression "Court" used in C.P.C. has not been defined anywhere in the C.P.C. General Clauses Act also does not contain any definition of Court. Whereas Bengal Agra Assam Civil Courts Act describes the different Courts and its hierarchy and other particulars, but it also does not define Court. In any event, the Court contemplated in Bengal Agra Assam Civil Courts Act are the Civil Courts established thereunder. It does not include a Court constituted or created by special statute. Admittedly, as rightly contended by Mr. Chatterjee the Registrar for some purposes is a Court, as was held in the decision In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . Therefore, the Registrar discharging power u/s 96 of the said Act is also a Court for certain purposes is by now a well settled proposition.

8.2 But would that enable a Civil Court to return a plaint for being presented before a Registrar u/s 96 of 1983 Act when the jurisdiction of Civil Court is barred u/s 134 of the said Act. To our mind, the answer cannot be In the affirmative. Under Order 7, Rule 10, C.P.C a plaint is returned for being presented to the Court to which the suit ought to have been instituted. For the purpose of presentation of the plaint on being so returned, the Court must be a Court where the plaint can be presented. It must be a Court where the proceedings must be identical and that the procedure of such Court are governed by the Code or are Courts recognised by C.P.C. In the absence of any definition of Court in C.P.C, we may refer to Sections 4, 5, 7 and 8 of the Code for the purpose of ascertaining the extent of the meaning of the expression "Court" contemplated in C.P.C By reason of Section 4, provisions of C.P.C. would not limit or otherwise affect any special or local law in force or any special jurisdiction or power conferred or any special forum or procedure prescribed by or under any other law for the time being in force. Thus, the application of C.P.C. is excluded in respect of forums created by special law providing for the regulation of the proceedings before such forum. Unless application of C.P.C. is extended to such forum, provisions of Order 7, Rule 10 cannot be attracted. Admittedly the extension of provisions of C.P.C. to such forum is limited u/s 125 of 1983 Act. Such extension does not include application of Order 7. Rule 10, C.P.C.

8.3 In *National Agricultural Co-operative Marketing Federation of India Limited v. Ram Narayan Tech Chand*, 1988 (1) Cal HN 441, a Division Bench of this Court had held that the Registrar under the 1973 Act is a Court while adjudicating upon a dispute u/s 86 (now Section 95) and not a Quasi-judicial Tribunal and therefore, Limitation Act has application in respect of such proceeding. But, this decision proceeds in the context of finding out as to whether Limitation Act applies to a proceeding u/s 87 (now 96). It is only for the purpose of application of Limitation Act, it was held to be a Court but that finding may not lead us to hold that it is also a Court for the purpose of Order, 7, Rule 10, C.P.C.

Therefore, on facts, the ratio decided therein is distinguishable when it related to Order 7. Rule 10, C.P.C. But it attracts the application of the Limitation Act in a proceeding before the Registrar or the Arbitrator in the process of settlement of disputes.

8.4 Similarly, the decision in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, does not help us in the present context. The Assistant Registrar was held to be a Court in a different context altogether. But then a distinction was made that the Assistant Registrar while adjudicating a dispute is a Court, but when the same dispute is adjudicated by an Arbitrator, the Arbitrator would not be a Court for the purpose of Contempt of Courts Act, on the analogy that the Registrar of Co-operative Society is a Government Officer in view of the subordination for the purpose of Section 3 of the Contempt of Courts Act, which means a judicial subordination and not a subordination under the hierarchy of Courts under the CPC or Criminal Procedure Code. Therefore, the Assistant Registrar under the Bihar and Orissa Cooperative Societies Act is a Court subordinate to the High Court for the purpose of Contempt of Courts Act. Thus, it is apparent that this decision is distinguishable on facts as discussed hereinbefore.

8.5 Mr. Chatterjee had referred to a single Judge decision of the Bombay High Court in *Rupchand Rajaram Shah Vs. Janata Consumers Co-operative Society Ltd. and Others*, . In the said decision, the Registrar while deciding a dispute was held to be a Court for the purpose of application of Section 14 of the Limitation Act. For similar reason on which we had distinguished the decision in *National Agricultural Co-operative Marketing Federation of India Limited* (supra), we also find that the decision in *Rupchand* (supra) is distinguishable since it is related to the application of Section 14 of the Limitation Act in deciding which the Registrar was held to be a Court with which we are in agreement. But the said decision is not a decision to persuade us to hold that the Registrar is a Court within the meaning of Order 7, Rule 10, C.P.C.

8.6 Admittedly, Chapter XI of the Cooperative Societies Rules, 1987 prescribes the special procedure governing the proceedings for settlement of dispute before the Registrar or the Arbitrator u/s 96 of 1983 Act. By reason of Section 125 only for limited purpose of ensuring attendance of witnesses etc. and examination of witnesses on oath, the manner as provided in C.P.C. is to be followed. This does

not make the Registrar or the Arbitrator a Court contemplated under Order 7, Rule 10 of C.P.C.

8.7 That apart, under Chapter XI, Rule 171 of the 1987 Rules, the reference is to be made in writing which is called a plaint. But it prescribes the manner of its contents which is much different from that of the plaint as is provided in Order 7, Rule 1, C.P.C. Rule 172 of the 1987 Rules prescribes the fees for filing of disputes, which is altogether different from the Court-fees payable on a plaint. Whereas the plaint is to be written on paper sufficiently stamped, governed by the Court-fees Act, which has no manner of application to a plaint under Rule 171 of the 1987 Rules. Thus, a plaint contemplated under Order 7, Rule 10 is completely different from the plaint as is understood under Rule 171 of the 1987 Rules. Thus, Order 7, Rule 10, C.P.C. cannot apply in a case where the forum is other than a Court governed by procedure other than the C.P.C. This is further strengthened by reason of Order 7, Rule 10-A, C.P.C., subject to which Rule 10 is applicable. In case the plaint is to be presented before the Registrar, then Rule 10-A can have no manner of application. When Rule 10 is made subject to Rule 10-A, it cannot be construed independent of Rule 10-A in order to ascertain the meaning of Court contemplated in Rule 10, which must be given the same meaning as it is understood in Rule 10-A. While construing the meaning of a particular expression used in particular provision, it cannot be interpreted out of context independent of other provisions. It has to be reconciled. It is to be given a meaning, which will fit in the respective provisions. It cannot be given different meaning in respect of different provisions in the same enactment. Therefore, Rule 10 cannot be attracted in a case where the Court to which the plaint is to be presented, is not a Court contemplated under Rules 10 and 10-A of Order 7, C.P.C., when a case is hit by Order 7, Rule 11(d), C.P.C.

9. Section 134 of the 1983 Act bars jurisdiction of Civil or Revenue Court among others in respect of dispute contemplated u/s 95 of the said Act. Section 9, CPC prescribes that a Civil Court has jurisdiction to entertain all suits of civil nature except suits, the cognizance whereof, is expressly or impliedly barred. In the present case, the jurisdiction of Civil Court is expressly barred by reason of Section 134 of 1983 Act. Therefore, this is a case, which comes within the mischief of Order 7, Rule 11(d), CPC. Section 134 of 1983 Act precludes the jurisdiction of a Civil Court in respect of any dispute referred to the Registrar u/s 95 of that Act. Section 95 of 1983 Act prescribes as to what would constitute dispute as defined in Section 2(20) of the said Act. Section 2(20) of Act defines dispute to mean "any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a co-operative society." But, this definition in order to attract the mischief of Section 134 has to be read in the context of Section 95 of 1983 Act. Inasmuch as, Section 134 of 1983 Act bars jurisdiction of Civil Court in respect of dispute referred to u/s 95 of that Act.

9.1. In order to appreciate the said situation, we may quote Section 95 of 1983 Act as hereinafter:?

95. Disputes to be referred to Registrar.

(1) Any dispute concurring the business of co-operative society capable of being the subject of civil litigation or any dispute relating to the affairs of a co-operative society (*****) shall be referred in the prescribed manner to the Registrar, if the parties thereto are among the following:?

(a) to (c) *****

(d) *** or an person *** having transaction with a co-operative society or ***

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be referred to the Registrar within two months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2) if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period of limitation, and the dispute so admitted shall not be barred by limitation.

9.2. A plain reading of the above provision indicates that the dispute must be between the parties mentioned in clause (a) to (d). We are not concerned with clauses (a), and (c). In the present case, the plaintiffs are not members of the society. But plaintiffs claimed to be any person contemplated in clause (d) having transaction with the cooperative society. Admittedly, the plaintiffs do have transaction with the co-operative society and as such it can be said that the plaintiffs can maintain a dispute within the meaning of Section 95 of 1983 Act. This proposition has not been disputed by Mr. Chatterjee.

9.3. On the other hand, he claims that the expression "transaction" in clause (d) is a transaction qualified by sub-section (1) of Section 95 of 1983 Act. Unless the transaction concerns the business of the co-operative society or relates to the affairs of a cooperative society, a person having such transaction cannot maintain a dispute. In other words, until a person having transaction concerning the business or relating to the affairs of a co-operative society is not entitled to raise a dispute u/s 95 of 1983 Act. Section 95 contemplates a dispute concerning business or relating to the affairs of a co-operative society, Therefore, the word transaction has to be a transaction qualified by sub-section (1) of Section 95 of 1983 Act and not otherwise.

9.4. In *Amaresh Sarkar v. Registrar of Co-operative Society*, 1980 (1) CHN 514 , it was held that the jurisdiction of the Civil Court is ousted when (a) there is a dispute; (b) the dispute relates to affairs of the society; and (c) it is between the parties enumerated in clauses (a) to (d) of Section 86 of the West Bengal Co-operative Societies Act. 1973. The provisions of Section 86 of the 1973 Act are *pari materia*, the same as in Section 95 of the 1983 Act, which replaced the 1973 Act. In order to attract the mischief of Section 134 of the 1983 Act, the dispute must fulfil the character of a dispute contemplated u/s 95 of the Act. In other

words, it must be between a cooperative society and a person having transaction with such co-operative society and that such transaction must concern the business or affairs of the co-operative society. In *Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others*, while interpreting the expression "any dispute" which was used in the same context in the Gujarat Co-operative Society Act, the Apex Court had held that the expression "any dispute" has been used in a narrower sense limited to the contested claim of a civil nature as contemplated in the said Act. In *Provat Kumar Chatterjee Vs. State of West Bengal*, it was held that if a transaction with the cooperative society is outside the business or affairs of the co-operative society, in that event, it would not attract Section 86 of 1973 Act, (Section 95 of the 1983 Act). In the said case, it was held that when a co-operative bank advancing loan to a non member contrary to Section 39 (Section 47 of 1983 Act) of the 1973 Act, such advancement of loan would not come under the affairs of the bank within the meaning of Section 86 of the 1973 Act. In *Jayanta Banerjee v. Beldanga Block 1, Co-operative Marketing Society* 1983 (87) CWN 638, it was held that word "transaction" means a piece especially of commercial business done and such transaction must have direct or reasonable proximity of connection with the primary object of the society appearing from the nature of the society and the rules or byelaws governing it. Business transaction can be validly entered into by the society. It may be a component of its affairs. But the dispute relating to the affairs of a society cannot include dispute concerning business transaction, which falls outside the scope of its primary object. Therefore, it is necessary to go into the question and decide whether it can be said that the dispute comes within clause (d) of Section 87(1) of the 1973 Act.

9.5. In *Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others*, Special Bench decision cited by Mr. Chatterjee, this Court had occasion to deal with similar question with regard to the business of the society. In the said decision, a Special Bench had laid down as follows at page 384; of AIR:?

7. As we have already noted, any "dispute" required to be referred to the Registrar under S. 86(1) of the Old or S. 95(1) of the New Act, would go out of the jurisdiction of the Civil Courts because of S. 132(2) of the Old and S. 134(2) of the New Act. The expression "dispute" has been defined in S.2(20) of the New Act as "any matter capable of being the subject to civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society". The definition as in S. 2(q) of the Old Act was also the same, but for the addition of the words "whether such claim be admitted or not" at the end, which probably makes no difference and surely no difference for our present purpose.

8. Having defined the term "dispute " as " any matter capable of being the subject to civil litigation", user of those very words purporting to qualify the expression "dispute" in S. 95(1) of the New Act is obviously sheer tautology. But enactment of good law is good enough, even if the language may lack precision.

Be that as it may, what must go to the Registrar under S. 95(1), and would go out of bounds of the Civil Courts is a "dispute" which is "concerning" the "business of" or "relating to the affairs of" a co-operative society. The expressions "concerning" and "relating to" and the expressions "business" and "affairs" may sound synonymous and reference to the Lexicon may also go to support such an impression. Tautology again ? We do not think so.

9. Anything concerning the business of a co-operative society is a matter relating to the affairs of the society. But everything relating to the affairs of the society may not be concerning the business of that society. Lending money to its members is obviously the business as well as the affairs of a "Cooperative Credit Society" as defined in S. 2(p) of the Act of 1973 and S. 2(17) of the Act of 1983. Providing its members with residential accommodation is obviously the business as well as the affairs of a "Co-operative Housing Society" as defined in S. 2(18) of the Act of 1983. But any dispute relating to the appointment or termination of service of any of the officers or employees of the society or any dispute relating to the holding or not holding the statutory meetings would be relating to the affairs of the society, but not necessarily concerning its business. From that point of view, even though the two expressions business and affairs may very often be used synonymously, the expression affairs has a wider connotation or import than that expression business. As we have already indicated, disputes relating to the constitution of the society, or the election of its office bearers, or the conduct of its general meeting and the like are obviously disputes relating to the affairs of the society, but may not be disputes concerning the business of the society, where the "business" of the society, as per its Rules and By-laws, consists of, say, lending money to its members as in the case of Co-operative Credit Society, or providing accommodation to its members, as in the case of a Co-operative Housing Society.

9.6. Thus, we are fortified by the distinction made therein. But whether such distinction can be ascertained in the facts and circumstances of his case simply on the basis of the averment made in the plaint. We shall examine this proposition hereafter.

9.7. In the decision in Anjan Choudhary (supra) reference was made to three decisions of the Supreme Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , in Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay, and in Mahabir Prasad Verma Vs. Dr. Surinder Kaur, , dealing with analogous provisions of S. 91 of the Maharashtra Co-operative Societies Act, 1961 where the expression "touching the business" in S. 91(1) of the Act had to be construed. The distinction was rightly noted therein. But such distinction can be ascertained only after referring to materials other than the averment made in the plaint.

9.8. On the other hand, Mr. Das had relied on Jessop's Co-operative Society Ltd. and Others Vs. Registrar of Co-operative Societies, W.B. and Others, wherein the word "relating to the affairs of the society" was held to be of a much larger

connotation and to be wide enough to cover every sphere of activity of the society whether activity relates to the business of the society in its narrow sense of trade and property, the management of the society, the administration, of the society and the running of the society. In the said case, the Court was concerned with the holding of Annual General Meeting of the Society, which is definitely an affair of the society. In this context the said decision has to be read and understood. Therefore, we may not derive much inspiration from the said decision having regard to the facts and circumstances and the context in the present case.

9.9. Mr. Das also relied on the same decision in Anjan Choudhary (supra) for his contention to support that the present transaction is a dispute within the meaning of Section 95 of the 1983 Act concerning the business or relating to the affairs of the society and could be ascertained from the averments made in the plaint. Though we find that the proposition laid down by the Special Bench has, in fact, accepted the already settled principle of law. But it does not lay down that the plaint is to be rejected even when the averment made in the plaint is not sufficient to determine the question of bar contemplated u/s 134 of the 1983 Act as is held by us.

Whether sale of land developed within the Township Scheme to a non member is a dispute: Is it clear from the averment made in plaint:

10. It is contended on behalf of the respondents that the land was acquired for the purpose and the object of the society and was developed. A township Scheme was prepared pursuant to the object of the society. The land was agreed to be sold as term for acquisition of land from the plaintiff No. 1. Therefore, it is a transaction concerning the business or relating to the affairs of the society. This fact is apparent from the averments made in the plaint itself. Therefore, the mischief of Section 134 of the 1983 Act is attracted. Thus, the suit is hit by the bar provided under Order 7, Rule 11(d) CPC. It is further contended that the land that would be sold or leased out to the plaintiff, being within the Scheme together with easement referred to in the schedule makes the society bound to maintain the facilities available in the Scheme, even in respect of those plots, though sold to a non member. Such maintenance comes within the purpose or object to a Housing Co-operative Society as provided u/s 2(18) of the 1983 Act.

10.1. Mr. Chatterjee, on behalf of the appellants, sought to distinguish the same by contending that the acquisition of land for the object and purpose of the society is a transaction concerning the business or relating to the affairs of the society. The development and preparation of scheme also concerns the business or relates affairs of the society. The maintenance also concerns the business or relates to the affairs of the society. But, being a non member, the plaintiff cannot enforce maintenance as against the society. Such maintenance can be provided only to the members of the society. Sale of excess land to non members is outside the object and purpose of the society. Therefore, it cannot form a transaction concerning the business or relating to the affairs of the society.

According to him, in order to ascertain this question, reference is to be made to the object of the society as would be apparent from the Byelaws of the society. In answer to the contention of Mr. Das, Mr. Chatterjee pointed out that the plaintiffs could never become a member of the co-operative society in view of the restrictions with regard to admission of members of the said Co-operative Housing Societies. Even then, in order to ascertain the same, it is necessary to look into materials other than the plaint. This is not permissible while deciding the question under Order 7, Rule 11, where only the averment made in the plaint alone is admissible.

10.2. In the present case, from the averments made in the plaint as rightly contended by Mr. Chatterjee, it cannot be conclusively determined without looking into other materials as to the distinction of the transaction concerning the business or relating to the affairs of the society. Inasmuch as whether the plaintiffs could be admitted into the membership of the society at a subsequent stage or whether the sale of the land to a non member is outside the object and purpose of the society or is not concerned, with the business or related to the affairs of the society or whether it would be bound to provide maintenance after such sale of the plaintiffs can be ascertained only after the Byelaws are looked into for ascertaining the purpose and object and the restriction with regard to admission or maintenance. It cannot be decided on the averments made in the plaint without further materials. Neither it can be decided conclusively as to whether such agreement for sale has any relation to the transaction relating to the acquisition of the property from the plaintiff No. 1. In order to ascertain such fact, one has to look into the agreement for sale and certain other materials. In the present case, from the averments made in the plaint, it cannot be so ascertained.

10.3. The moot question that is to be I ascertained is as to whether the transaction referred to in the plaint concerns the business or relates to the affairs of the society and is permissible within the purpose and object of the society in order to give rise to a dispute contemplated u/s 95 of the 1983 Act otherwise prohibited from being a subject matter of civil litigation before a civil Court in view of the embargo provided in Section 134 of that Act. As discussed above, from the averments made in the plaint, it is not possible to ascertain the said question except without looking into other materials, viz., the Byelaws, the agreement for sale and the qualification for becoming a member and other materials, Therefore, this question cannot be determined except by framing an issue and deciding the same as a preliminary issue.

10.4. Mr. Chatterjee had relied on Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, in order to support his contention that the transaction in the present case is outside the business of the society. In the said decision, it was held that business used in Section 91(1) of Maharashtra Co-operative Societies Act, which is identical with Section 95 of the West Bengal Act was held to have been used in narrower sense. It means the actual trading or

other similar business activity of the society, which it is authorised to enter into under the Act, the Rules and the Bye laws. In the said case on facts where the bank was acquiring a building did not concern the affairs or business of the society. The said decision may or may not help Mr. Chatterjee but we cannot go into the said question in view of the fact that the question in the present case is incapable of being conclusively ascertained simply on the basis of the averments made in the plaint as observed earlier. Therefore, this decision does not help us in the present context.

Absence of expertise cannot be presumed:

11. The contention that the Registrar or the Arbitrator is not possessed with the expertise of a Civil Court to determine complicated questions arising out of a civil claim for specific performance of the contract is wholly misplaced. When a special statute provides a bar and creates a special forum for settlement of such matters, in such cases it is in its wisdom the legislature has provided for such bar. Such wisdom cannot be questioned by Courts. Neither the Court is concerned to find out the consequences. It has to leave the matter at that. It is not for the Court to determine the inability or incapacity of the Registrar or the Arbitrator. Neither the Court is concerned with the same. Nor the Court can presume incapacity or inability. Such a contention was overruled by this Court in a Special Bench decision of this Court in Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others, Conclusion:

12. For the reason foregoing, the order appealed against is liable to be set aside since on the basis of the averments made in the plaint, we cannot come to a conclusion that the bar of Section 134 of the 1983 Act could be conclusively decided. According to us, it can be decided only having regard to the object and purpose as contemplated in the by-laws of the society and other materials as discussed above. Therefore, such a question cannot come within the purview of Order 7. Rule 11(d), CPC. It can be decided as a preliminary issue before entering into the other questions. Since the issues have already been framed and the suit is ripe for hearing, it would be wise to decide the question of jurisdiction as a preliminary issue first and pass appropriate order thereon, on the basis of the materials that may be produced before the Court to show that the transaction concerns the business and relates to the affairs of the society and as such is a dispute within the meaning of Section 95 of the 1983 Act so as to attract the bar provided u/s 134 of the Act to exclude the jurisdiction of Civil Court as contemplated u/s 9, CPC, and then to proceed with the hearing of the suit if it is held in favour of the plaintiffs. It is expected that the Learned Trial Court shall decide the preliminary issue within a period of three months from the date of communication of this order. Let the records be transmitted, if arrived, to the Court below forthwith.

Order.

13. In the result, the appeal succeeds, to the extent indicated above. The Order

dated 1st Sept. 1999 rejecting to the plaint and the decree passed in Title Suit No. 218 of 1995 by the Assistant District Judge. 5th Court, Alipore is hereby set aside. The Suit is readmitted and remanded to the Learned Court below for fresh decision in the light of the observation made above.

No costs.

Xerox certified copy of this Order, if applied for, be given within seven days.

Joytosh Banerjee, J.

14. I agree.