
(2003) 10 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 2685 of 2001

Versova Gurudutt Co-operative Housing Society Ltd.

APPELLANT

Vs

Divisional Joint Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Citation : (2004) 1 ALLMR 1 : (2004) 1 MhLj 1118

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : R.D. Dhanuka and V.M. Choudhari, instructed by A.R. Dhanuka, for the Appellant; Pradeep Jadhav, Asst. Government Pleader for respondent Nos. 1 and 2, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the petitioners and the respondent Nos. 1 and 2. None present for the respondent No. 3, though served.

2. The petitioners challenge the order dated 13-8-2001, passed by the Deputy Registrar, Co-operative Societies, rejecting the objections raised by the petitioners for execution of the recovery certificate issued against the petitioner-society in relation to the alleged arrears pertaining to the service charges payable to the respondent No. 3. The challenge is three fold. Firstly, that the appellate authority rejected the objections without even holding the necessary inquiry as is otherwise required to be held in terms of the provisions of law, more particularly those contained in Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, hereinafter called as "the said Rules", Secondly, that the appellate authority failed to take note of the fact that the claim for arrears is on the basis of the resolutions of the respondent No. 3 which were passed contrary to the bye-laws of the society and therefore they are ab initio bad in law and no claim could have been based on such resolutions. Thirdly, the amounts claimed apparently included the service charges for the period beyond three years prior to the date of such claim and therefore they were barred by the law of limitation

and the provisions of Section 92 of the Maharashtra Co-operative Societies Act, 1960, hereinafter called as "the said Act", were not applicable in the matter.

3. As regards the ground pertaining to limitation, Section 92(1)(a) of the said Act provides that notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions of the said Act, the period of limitation in the case of dispute referred to the Co-operative Court u/s 91 of the said Act when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be computed from the date on which such member dies or ceases to be a member of the society. Bare reading of this provision would disclose that the period of limitation specified under Clause (a) of Sub-section (1) of Section 92 relates to disputes which are referred to the Co-operative Court u/s 91 and not in relation to the matters arising under any other provisions of law contained in the said Act or placed before any other authority under the said Act. Admittedly, the matter in question was placed before the authority in terms of Section 101 of the said Act. The provisions of Section 92(1) of the said Act are not attracted in the matter relating to disputes raised before the Registrar u/s 101 of the said Act and therefore the petitioners are justified in contending that the period of limitation prescribed u/s 92(1)(a) cannot be applied to the cases placed before the Registrar u/s 101. The appellate authority having totally ignored this aspect, has acted illegally while rejecting the objection sought to be raised on behalf of the petitioners.

4. As regards the point relating to legality of the resolutions passed by the respondent No. 3 and the consequential claim based on such resolutions, it is to be noted that the authority below has not at all addressed itself to this issue while disposing of the issue. As rightly submitted by the learned Advocate for the petitioners, the bye-laws of the respondent No. 3 disclose that the respondent No. 3 is entitled to claim the service charges from the societies who are the members of the respondent No. 3 and the said bye-laws do not relate to any liability of the members of such societies who are members of the respondent No. 3. At least the materials placed before this Court do not disclose any such provision. In any case, before arriving at any conclusion in that regard, it was necessary for the appellate authority to address itself to this issue and on consideration of the entire materials in that regard to arrive at an appropriate finding, while disposing of the objections sought to be raised by the petitioners. The authority having failed to consider this aspect of the matter and having rejected the objections without addressing itself to the said issue, has acted in contravention of the provision of Rule 107 of the said Rules, as rightly submitted by the learned Advocate for the petitioners.

5. As already observed above, since while rejecting the objections sought to be raised by the petitioners, the authority having not addressed to the above referred issue, as also having not investigated into the matter in the manner it is required to investigate in terms of the provision of Rule 107, and more particularly Sub-rules (19) onwards thereof, the impugned order cannot be

sustained and is liable to be set aside and the matter to be remanded to the concerned authority to decide the same afresh, bearing in mind the observations hereinabove and in accordance with the provisions of law contained in Rule 107 of the said Rules. The parties shall be entitled to place on record whatever materials they want to place on record in support of their rival contentions and the authority shall pass appropriate order, after hearing the parties.

6. In the result, the impugned order is set aside and the matter is remanded to decide the same afresh, as stated above. The rule is made absolute accordingly with no order as to costs. Needless to say that the deposit already made by the petitioners shall be subject to final order which is to be passed by the concerned authority.

7. All concerned to act on the ordinary copy of this order duly authenticated by the Associate/P. S. of this Court as a true copy.