

## **Marine Times Publications Pvt. Ltd vs Shiriram Transport And Finance Co. Ltd. ... on 26 October, 1990**

**Equivalent citations: 1991 AIR 626, 1990 SCR SUPL. (2) 466, AIR 1991 SUPREME COURT 626, 1991 (1) SCC 469, 1991 AIR SCW 74, 1990 (2) UJ (SC) 732, 1991 ( ) CO-OP TJ 473, 1990 UJ(SC) 2 732, (1990) 4 JT 332 (SC), 1990 (4) JT 332, (1991) MAH LJ 347, (1991) 2 MAHLR 772, (1991) BANKJ 495, (1991) 2 BANKCLR 18, 1991 ( ) BOM LR 6**

**Author: M.H. Kania**

**Bench: M.H. Kania, R.M. Sahai**

PETITIONER:

MARINE TIMES PUBLICATIONS PVT. LTD.

Vs.

RESPONDENT:

SHIRIRAM TRANSPORT AND FINANCE CO. LTD. AND ANR.

DATE OF JUDGMENT 26/10/1990

BENCH:

KANIA, M.H.

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KANIA, M.H.

SAHAI, R.M. (J)

CITATION:

1991 AIR 626	1990 SCR Supl. (2) 466
1991 SCC (1) 469	JT 1990 (4) 332
1990 SCALE (2) 854	

ACT:

Maharashtra Cooperative Societies Act, 1960: Section 91 Cooperative Society--Agreement to sell office premises in a building owned by the Society between a member and a non-member--Agreement subject to approval of the Cooperative Society--Refusal of permission by the Cooperative Society--Reference of dispute by non-member to Cooperative Court praying specific performance of agreement and a direction to the Society for approval of agreement--Claim of nonmember whether a claim against the Society through a member-Dispute "whether touching the business of society"--Cooperative court whether has jurisdiction over the dispute.

HEADNOTE:

The appellant company, a member of Cooperative Society, respondent No. 2, was having its office premises in a building owned by respondent No. 2. It entered into an agreement to sell the said premises to respondent No. 1, a non-member subject to the approval of the Cooperative Society. The Cooperative Society declined to grant permission for transfer of the premises. Respondent No. 1 filed a dispute against the appellant and respondent No. 2 Cooperative Society in the Cooperative Court under section 91 of the Maharashtra Cooperative Societies Act, 1960 praying for a decree of specific performance of the contract and a direction to the Cooperative Society to approve the said agreement.

The Cooperative Court dismissed the dispute for want of jurisdiction. On appeal by respondent No. 1, the Maharashtra Cooperative Appellate Court set aside the order of the Cooperative Court. Against the order of the Cooperative Appellate Court, the appellant filed a writ petition in the High Court which was dismissed by holding that the dispute was governed by Section 91 of the Act.

In the appeal to this Court against the Judgment of the High Court, it was contended on behalf of the appellant that the dispute between the parties was not governed by Section 91 since it was neither a dispute "touching the business of the society" nor was it a dispute between a person claiming through a member against the society.

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Allowing the appeal and setting aside the judgment of the High Court, this Court,

HELD: 1. Before a dispute can be referred to a Cooperative Court under the provision of section 91(1) of the said Act it is not only essential that the dispute should be of a kind described in sub-section (1) of section 91 but it is also essential that the parties to the said dispute must belong to any of the categories specified in clauses (a) to (e) of subsection (1) of the said section. [473B]

2. In the instant case the main claim of Respondent No. 1 a nonmember, was for a decree for specific performance of the agreement. The prayer for an order that respondent No. 2-Society should be directed to give their approval to the said agreement was merely an ancillary prayer made with a view to complete the relief of specific performance. The main claim to have the agreement specifically performed cannot be said to be a claim made by a person (non-member) against the Society. The claim against the society cannot be said to be made through a member, the appellant, because it is only when a decree for performance of the said agreement is passed against the appellant, that it could be contended that the other relief namely, for an order directing re-

spondent No. 2 to approve the said agreement is claimed against the society through a member. Consequently, the dispute cannot be said to fall within the scope of section 91(1)(b) of the Act. Therefore, the High Court committed an error in coming to the conclusion that both the parties to the dispute belonged to the categories covered under section 91(1)(b) of the Act. [473E-H; 474A]

Deccan Merchants Cooperative Bank Ltd. v. M/s Dalichand Jugraj Jain and Ors., [1969] 1 S.C.R. 887; M/s Leong and Anr. v. Smt. Jinabhai G. Gulrajami and Ors., A.I.R. 1981 Bom. 244 and Sanwarmal Kejriwal v. Vishwa Cooperative Housing Society Ltd. and Ors., [1990] 2 SCC 288, distinguished.

O.N. Bhatnagar v. Smt. Rukibai Narsindas & Ors., [1982] 3 S.C.R. 681, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4979 of 1990.

From the Judgment and Order dated 25.8.1989 of the Bombay High Court in W.P. No. 6058 of 1986.

V.M. Tarkunde, D.R. Poddar and V.B. Joshi for the Appellant. K.P. Parasaran (N.P.), Rama Subramaniam, A.K. Ganguli, R.P. Bhat, K. Swamy and A.S. Bhasme for the Respondents. The Judgment of the Court was delivered by KANIA, J. Leave granted. Counsel heard.

This is an appeal from the judgment of a learned Single judge of the Bombay High Court dismissing Writ Petition No. 6058 of 1986 filed by the appellant on the Appellate Side of that Court. The appellant and respondent No. 1 are companies incorporated under the Indian Companies Act. Respondent No. 2 is a Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1961 (hereinafter referred to as "the said Act"). Appellant is a member of respondent No. 2- Cooperative Society and has its office premises in the building owned by respondent No. 2. Some time prior to September 10, 1985 the appellant entered into an agreement to sell the said office premises to respondent No. 1 subject to the approval of respondent No. 2. The terms of the said agreement were incorporated in a letter dated September 10, 1985 addressed by the appellant to the Vice-Chairman and the president of respondent No. 1: It was set out in the said letter that the price for the said premises was to be calculated at the rate of Rs. 2,000 per square feet. The letter further stated:

"We are agreeable to sell you the same subject to approval of the Cooperative Society owning the building. We shall provide you vacant possession and hand over the same free of all incumbrances only after we are able to obtain alternate accommodation for our company .....

A sum of Rs. 50,000 was paid by a demand draft by respondent No. 1 to the appellant under the said agreement. By a letter dated November 15, 1985 the appellant sought the approval of respondent No. 2 to the transfer of the said office premises to respondent No. 1. By its letter dated November 18, 1985 addressed to the appellant, respondent No. 2 stated that the appellant was requested to offer to transfer of the said premises to the existing members of the society as a first preference as per the established practice of the society. It further stated that in case the existing members of respondent No. 2 were not willing to buy the said premises, the premises could be given for trans-

fer to an outside transferee. By its letter dated November 22, 1985, addressed to respondent No. 1 the appellant pointed out that respondent No. 2 had declined to grant permission for transfer unless the premises were first offered to the existing members of the society by way of a first preference. The said letter then stated that it was not possible to continue negotiations any further. Along with the said letter the demand draft of Rs.50,000 referred to above was returned by the appellant. Without any further correspondence respondent No. 1 filed a dispute in the Cooperative Court No. 17 Bombay against the appellant and respondent No. 1 by statement of claim which can be conveniently referred to as a plaint.

In the plaint respondent No. 1 inter alia stated that on the promises and representations made by the appellant to respondent No. 1 it had paid a sum of Rs.2,60,000 to one I.M. Choksey representing himself as the Chairman of the appellant and one S. Ramakrishnan, claiming to be the representative of his wife who was a Director of the appellant. Respondent No. 1 further claimed that it had paid a further sum of Rs.40,000 in cash to the appellant without taking a receipt. Respondent No. 1 urged that but for the assurance given by Choksey and Ramakrishnan acting on behalf of the appellant and one Col. G.D. Hadeb, acting on behalf of respondent No. 2 that the appellant would be in a position to transfer the said premises by the end of November 1985 and respondent No. 2 would not object to such transfer, respondent No. 1 would not have paid such a huge amount to the appellant. Respondent No. 1 further stated that the appellant and respondent No. 2 had promised respondent No. 1 that they would complete the formalities of transfer of the said premises within a few days and there would be no objection or obstruction whatever in the said transfer. Respondent No. 1 went on to say that it was given to understand that the appellant and respondent No. 2 were conspiring to sell the said premises to a third party for a larger amount. Respondent No. 1 was ready and willing to perform its part of the contract and prayed for an order for specific performance of the contract. The relevant portion of paragraph 10 of the plaint, which deals with jurisdiction, sets out that respondent No. 2 is a cooperative society and is vitally interested in the transfer and sale of the said premises and to ensure that the transfer is done under the provisions of its bye-laws, the said Act and the rules. Respondent No. 2 had taken active part in the transaction entered into between respondent No. 1 and the appellant who is a member of respondent No. 2, and that respondent No. 1 was claiming his rights through the appellant who was a member and hence, the subject matter of the dispute fell within the ambit of section 91 of the said Act. Respondent No. 1 prayed for a declaration that the aforesaid dispute was a dispute falling under section 91 of the said Act and prayed that the appellant and respondent No. 2 should be directed to specifically perform the agreement recorded in the letter of September 10, 1985 and transfer the said premises to respondent No. 1. The rest of the prayers in the plaint are immaterial for our purposes.

Pursuant to certain orders made by the Bombay High Court the Cooperative Court framed an issue as to whether it had jurisdiction to entertain the dispute. The Court recorded evidence led by respondent No. 1 off this issue and dismissed the dispute for want of jurisdiction. This order was set aside by the Maharashtra Cooperative Appellate Court, Bombay, by its order dated September 9, 1986. The appellant herein filed a writ petition in the High Court to challenge the said order. The learned Single Judge who heard the said writ petition dismissed the same and held that the case was governed by the provisions of section 91 of the said Act.; It is this decision which is sought to be challenged before us by the appellant.

It is submitted by Mr. Tarkunde, learned counsel for the appellant that the agreement to sell the said premises with which we are concerned, was entered into between the appellant, a member of respondent No. 2, a Cooperative Society and respondent No. 1, a nonmember. The said agreement was for transfer of premises belonging to the appellant to respondent No. 1, a non-member, in a building owned by respondent No. 2, a cooperative society. The claim in the dispute was for obtaining the specific performance of the said agreement and the prayer for directing respondent No. 2 to approve the said agreement was in the nature of an ancillary prayer to complete the relief. The main relief was for specific performance of the said agreement. It was submitted by him that such a dispute cannot be said to be a dispute "touching the management or business of a society" as contemplated in sub-section (1) of section 91 of the said Act nor can it be said that respondent No. 1, a non-member was making a claim against respondent No. 2-society through a member, namely, the appellant. The main relief sought was for specific performance of an agreement by a member to sell the premises in the society building to a non member and such a claim can never be said to be made against the society through a member.

In order to appreciate the submissions made, it is desirable to set out the material portion of Section 91 of the said Act which runs as follows:

"91(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the construction, elections of the office beares. conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society to the Cooperative Court if both the parties thereto are one or other of the following:

(a) x x x x x x x

(b) a member, past member or a person claiming through a