

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.149 of 2018

Sultan Ahmed Hassan and another

VERSUS

T & T Employees Cooperative Housing Society and others

Appellants by : **Ch. Naseer Ahmed Tahir,
Advocate.**

Respondent No.1 by : **M/s Jameel Hussain Qureshi and
Nawazish Ali, Advocates.**

Respondents No.2 & 3 by : **Ex-part.**

Date of Hearing : **23-04-2024.**

SAMAN RAFAT IMTIAZ, J.:-

1. The Appellants/Plaintiffs [Sultan Ahmed Hassan and Sultan Gul Hassan] have filed the instant Regular First Appeal to assail the Judgment and Decree dated 15-09-2018 (“**Impugned Judgment**”) passed by the Court of the learned Civil Judge 1st Class (West), Islamabad (“**Trial Court**”), whereby the Suit filed by the Appellants/Plaintiffs was dismissed.
2. The relevant facts of the case as per the Memo of Appeal are that the Appellant/Plaintiff No. 1 and Appellant/Plaintiff No.2 were allotted Plot Nos. 688 and 689 (“**Subject Plots**”) respectively vide separate Allotment Letters dated 21.06.2004 issued by the Respondent/Defendant No. 1 [T & T Employees Cooperative Housing Society]. The Appellants/Plaintiffs claim that possession of the Subject Plots was delivered to them vide Letters No.022 and 021 dated 30.11.2010 and 01.12.2010 respectively and that they raised boundary walls after taking possession in the month of December, 2010. They alleged that the Respondent/Defendant No.1 demolished the boundary walls of the Subject Plots without any lawful authority and that the matter was reported to Respondents/Defendants No.2 and 3 [The D.C./Registrar, Cooperative Department, ICT and the Circle Registrar, Cooperative

Department, ICT] but they failed to fulfill their obligations and further that Appellants/Plaintiffs repeatedly asked the Respondents/Defendants to restore possession but to no avail.

3. The Appellants/Plaintiffs filed Suit for Possession, Permanent and Mandatory Injunction (“**Subject Suit**”) before the learned Trial Court. The Respondent/Defendant No. 1 filed a written statement whereby allotment of the Subject Plots to the Appellants/Plaintiffs was not denied however it was claimed that developmental work is in progress due to which possession has not been delivered to any member and as such the question of dispossession or restoration of possession does not arise. The learned Trial Court framed the following issues:

- (i) *Whether the plaintiffs are entitled for possession, permanent and mandatory injunction as prayed for? OPP*
- (ii) *Whether the plaintiff has no cause of action and locus standi to file the instant suit? OPD*
- (iii) *Whether the jurisdiction of this court is barred under Section 54, 70, 70-A of the Cooperative Societies Act? OPD*
- (iv) *Whether the suit is not maintainable and plaint is liable to be rejected under Order VII Rule 11 CPC? OPD*
- (v) *Relief.*

4. After recording of evidence and hearing the arguments of the parties, the learned Trial Court dismissed the Subject Suit vide the Impugned Judgment by deciding Issue No.1 and holding, in essence, that the Appellants/Plaintiffs did not meet their burden of proof under Section 9 of the Specific Relief Act, 1877 (“**Specific Relief Act**”) and that the Subject Suit was time barred under Article 3 of the Limitation Act, 1908 (“**Limitation Act**”). Whereas Issues No.2, 3, and 4 were not pressed by the Respondents/Defendants.

5. It is noted that the Subject Suit was filed by the Appellants/Plaintiffs without specifying the provision of law where under it had been instituted. The Trial Court took into consideration the fact that though the Appellants/Plaintiffs asserted that they were in possession of the Subject Plots which they have been dispossessed of, they only sought restoration of possession without seeking any declaration and as such determined that the Subject Suit was a suit under Section 9 Specific Relief

Act. Furthermore, according to the Impugned Judgment during the course of arguments the learned counsel for the Appellants/Plaintiffs, in answer to a specific question, stated at bar that the Subject Suit is a suit for restoration of possession under Section 9 *ibid*.

6. As such, the learned Trial Court found that the Subject Suit is a suit under Section 9 of the Specific Relief Act and therefore opined that the court simply has to determine whether or not the Appellants/Plaintiffs were holding possession of the Subject Plots and whether they were dispossessed of the same. The Trial Court after recording of evidence held by way of the Impugned Judgment that the Appellants/Plaintiffs did not produce cogent evidence with respect of delivery of possession or the alleged dispossession and as such a decree of restoration of possession cannot be granted.

7. The learned Trial Court further observed in the Impugned Judgment that the plaint does not mention the date of dispossession which is fatal to a suit under Section 9 of the Specific Relief Act and that even otherwise the date of dispossession as deposed by the PW-1 (attorney of the Appellants/Plaintiffs) makes the Subject Suit time barred and as such the Appellants/Plaintiffs are not entitled to any relief. Being aggrieved of the Impugned Judgment the Appellants/Plaintiffs preferred the instant appeal.

8. The learned counsel for the Appellants/Plaintiffs submitted that the Impugned Judgment is the result of misreading and non-reading of evidence. He argued that the Subject Suit was filed under Section 8 of the Specific Relief Act which is governed by Article 142 of the Limitation Act, 1908 where under the limitation period is 12 years from the date of dispossession and, therefore, the Subject Suit was not time barred. According to the learned counsel for the Appellants/Plaintiffs the learned Trial Court wrongfully observed that the counsel had categorically stated at the bar that it is a suit for restoration of possession under Section 9 of the Specific Relief Act, which attracts a limitation period of six months under Article 3 of the Limitation Act, 1908 as no such statement had been made. He explained that declaration as to ownership was not sought as the title of the Subject Plots is admitted by the Respondents/Defendants

but that the same does not take the Subject Suit out of the purview of Section 8 of the Specific Relief Act.

9. On the other hand, the learned counsel for the Respondent/Defendant No.1 drew the attention of the Court to various paragraphs of the plaint filed in the Subject Suit instituted by the Appellants/Plaintiffs wherein it has been categorically alleged that possession was delivered to the Appellants/Plaintiffs after allotment. He therefore argued that the learned Trial Court correctly concluded that the Subject Suit was a suit under Section 9 of the Specific Relief Act which is a suit by a person dispossessed of an immovable property. He contended that the Subject Suit does not fall under Section 8 of the Specific Relief Act as such a suit pertains to a claim of possession of immovable property based on entitlement whereas no declaration as to title was sought by the Appellants/Plaintiffs vide the Subject Suit as is evident from the prayer. He also submitted that even otherwise the Subject Suit was not maintainable as it was filed against a cooperative society which is governed by the Cooperative Societies Act, 1925 ("**Cooperative Societies Act**") wherein according to Section 54, if any dispute touching the business of a society arises it shall be referred to the Respondent/Defendant No. 2/Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned.

10. I have heard the learned counsel for the parties and have also perused the relevant record.

Difference between Sections 8 and 9 of the Specific Relief Act

11. The first point for determination in the instant appeal is whether the Subject Suit was a suit under Section 8 or Section 9 of the Specific Relief Act. In order to make such determination it is necessary to first understand and appreciate the distinction between the two aforementioned provisions of the Specific Relief Act.

12. In this regard, the case of *Late Mst. Majeedan Vs. Late Muhammad Naseem through Legal Heirs and another, 2001 SCMR 345* is instructive.

In the said case the immovable property was owned by the petitioners who had allowed the respondent to establish a business thereupon but later on dispossessed the respondent by use of force. Consequently, a suit under Section 9 of the Specific Relief Act was filed by the respondents. The petitioners' objected to the maintainability of such suit under the aforesaid provision of law. The Supreme Court examined various rulings not just from Pakistan but also from India and explained that Section 9 gives a specific privilege to a person in possession to take action promptly in case they are dispossessed. It entitles them to succeed simply by proving (a) that they were in possession; (b) that they have been dispossessed by the defendant; (c) that the dispossession is not in accordance with the law; and (d) that the dispossession took place within six months of the suit.

13. The Supreme Court clarified that no question of title either of the plaintiff or of the defendant can be raised or gone into in such case. In fact, if the plaintiff is in possession it is immaterial that such possession was without title. The Supreme Court emphasized that it is a well-established legal position that any person who has been dispossessed otherwise than in due course of law can without pleading or proving title seek recovery of title and that such relief may be sought even against the true owner of the property himself. In suits under Section 9 *ibid* the court does not try the question of title and therefore the defendant cannot resist the plaintiff's suit on the ground of his being the rightful owner. No matter how good the title of the defendant, the person previously in possession is entitled to a decree of possession in a suit under Section 9 of the Specific Relief Act if the dispossession is otherwise than due course of law provided that the suit is brought within six months of the date of dispossession. In other words the only question to be seen in suits under Section 9 *ibid* is whether the plaintiff was in possession and whether such possession has been disturbed without lawful authority.

14. The Peshawar High Court discussed the difference between a suit brought under Section 8 and one brought under Section 9 of the Specific Relief Act in *Muhammad Saeed Vs. Abdur Rahim*, PLD 2015 Peshawar 94. It was held that the provisions contained in Section 8 of the Specific Relief Act provide the remedy for recovery of specific immovable

property to any person entitled to possession against any person having no legal title to retain or occupy and possess such land whereas the provisions contained in Section 9 *ibid* provide remedy to a person who has been dispossessed without his consent otherwise than in due course to recover his legal possession.

15. Similarly the Sindh High Court at Karachi in *Muhammad Hassan Vs. Dharamdas*, 2000 YLR 637 described the difference by holding that Section 9 *ibid* provides the relief of reinstatement/possession to a person who has been illegally dispossessed and that for such purpose he is not required to prove title whereas Section 8 of the Specific Relief Act provides remedy to a person who is entitled to possession of an immovable property such as owner, mortgagor, mortgagee or trustee or a beneficiary in trust and also tenants and lessees. There are a number of judgments that have recognized that Section 8 *ibid* provides remedy to not only persons entitled to possession on the basis of ownerships but also on the basis of possession¹.

Whether the Subject Suit was filed under Section 8 or Section 9 of the Specific Relief Act

16. Now let us see how to gauge whether a suit has been filed under Section 8 or Section 9 of the Specific Relief Act particularly when no specific provision has been referred to in such suit. In the case of *Mehran Bibi and others Vs. Sarwar Khan*, 2003 Law Notes 137 the Lahore High Court held that if by reading the whole plaint, it is found that the case of the plaintiff is based upon his previous possession and subsequent dispossession by defendants, suit was competent under Section 9 but if it was found that the plaintiff is claiming possession on the basis of his title to the property and further alleged dispossession by the defendant, such suit would fall under Section 8.

17. I have examined the plaint filed by the Appellants/Plaintiffs in the Subject Suit in light of the said case law. The perusal of the plaint clearly shows that Appellants/Plaintiffs are seeking recovery of possession of the Subject Plot on the basis of their respective allotment letters. Thus it is evident that possession is claimed by the Appellants/Plaintiffs vide the

¹ *Maderssa Darul Fazal Halani Vs. Muhammad Ramzan Kashmiri*, 2005 CLC 83

Subject Suit on the basis of their title to the Subject Plots and that they have been dispossessed of the possession thereof at the hands of the Respondent/Defendant No.1, which brings the Subject Suit within the purview of Section 8 of the Specific Relief Act.

Is a suit maintainable under Section 8 of the Specific Relief Act without seeking declaration as to title?

18. The learned counsel for the Respondent/Defendant No.1 argued that a suit under Section 8 of the Specific Relief Act cannot be brought without seeking declaration to title. In my humble opinion such stance is misconceived. Section 8 *ibid* provides the remedy of recovery of specific immovable property to a person entitled thereto. That does not mean that a person entitled to possession of an immovable property would in all cases also be compelled to seek declaration with regard to his title. A person entitled to immovable property may be dispossessed of it without denial of his title in which case there would be no need to seek a declaration of title.

19. The Lahore High Court in Sardaran Bibi Vs. Muhammad Arshad, 2022 CLC 1703 and Muhammad Ayub (Deceased) through L.Rs. Vs. Hashim Khan (Deceased) through L.Rs., 2023 CLC 504 while relying upon *Hazratullah Vs. Rahim Gul*, PLD 2014 SC 380 held that the words ‘*entitled to the possession*’ as used in Section 8 of the Specific Relief Act presupposes that in order to obtain a decree for possession the plaintiff in such case is entitled to the possession or in other words that it implies an inbuilt declaration as to entitlement of a plaintiff in respect of a property. In fact, if the title/ownership is in dispute for which declaration is required the suit would be instituted under Section 42 of the Specific Relief Act and not under Section 8 *ibid*².

20. In the instant case, a bare perusal of the written statement filed by the Respondent/Defendant No. 1 shows that issuance of the allotment letters to the Appellants/Plaintiffs in respect of the Subject Plots has not been denied. Instead the case of the Respondent/Defendant No. 1 simply is that since developmental work is in progress possession has not been delivered to any member and as such the question of dispossession or

² *Muhammad Yameen alias Raja Vs. The State*, 2019 SCMR 84

restoration of possession does not arise. In such circumstances where the Respondent/Defendant No. 1 has not denied the Appellants/Plaintiffs title to the Subject Plots they were not required to seek any declaration as to title. However, that does not change the fact that the claim of the Appellants/Plaintiffs is based on their title to the Subject Plots and not simply prior possession which they have been deprived of. Therefore, the learned Trial Court erred in concluding that the Subject Suit filed by the Appellants/Plaintiffs was a suit under Section 9 of the Specific Relief Act.

Scope of a suit under Section 8 of the Specific Relief Act

21. This error led to the incorrect premise of the learned Trial Court that the court simply has to determine whether or not the Appellants/Plaintiffs were holding possession of the Subject Plots and they were dispossessed of the same. The Trial Court after recording of evidence held by way of the Impugned Judgment that the Appellants/Plaintiffs did not produce cogent evidence with respect of delivery of possession and the alleged dispossession and as such a decree of restoration of possession cannot be granted.

22. On the contrary, since the Subject Suit was in fact a suit under Section 8 of the Specific Relief Act the Trial Court was required to determine whether the Appellants/Plaintiffs were entitled to the possession of the Subject Plots on the basis of their allotment regardless of whether or not they were earlier granted possession thereof and were dispossessed of the same unlawfully. In the case of *Mst. Nishat Mushtaq Vs. Karachi Development Authority, 2004 YLR 1811* an objection was raised that admittedly possession had never been delivered to the appellant whereas concept of recovery of possession necessarily entails earlier dispossession. The Sindh High Court at Karachi was not persuaded and clarified that recovery of possession must be preceded by dispossession for a suit under Section 9 of the Specific Relief Act however under Section 8 a person entitled to possession may recover it in the manner prescribed in the C.P.C. Thus even if the Appellants/Plaintiffs were unable to prove by way of evidence that possession had been delivered to them earlier as alleged and thereafter they were dispossessed the Trial Court under Section 8 of the Specific Relief Act was

nevertheless required to determine whether the Appellants/Plaintiffs were entitled to possession or not based on their ownership.

23. Similarly the Trial Court erred in holding that the Subject Suit being a suit under Section 9 of the Specific Relief Act is governed by Article 3 of the Limitation Act where under limitation is six months and that as such the Subject Suit was time barred. Since the Subject Suit was a suit under Section 8 of the Specific Relief Act the applicable period of limitation was 12 years as provided under Article 142 of the Limitation Act.

24. Be that as it may, these issues have lost its significance for reasons discussed below.

Jurisdiction of Civil Courts in view of Sections 54, 70, and 70A of the Cooperative Societies Act

25. The second point for determination in the instant appeal is whether the Subject Suit was maintainable in view of Sections 54, 70, and 70A of the Cooperative Societies Act. It is noted that the issues framed by the learned Trial Court in this regard i.e. Issue Nos. 3 and 4 were not pressed by the Respondents/Defendants. However, courts are duty bound to decide fundamental questions such as jurisdiction at the earliest even if no objection to such effect has been raised³. Yet no findings were rendered by the Trial Court in respect of the maintainability of the Subject Suit on the touchstone of Sections 54, 70, and 70A of the Cooperative Societies Act.

26. Regardless however it is settled law that jurisdiction being a question that goes to the root of the dispute can be raised even at the appellate stage⁴. Lack of jurisdiction renders the entire proceedings *coram non judice* thereby vitiating the entire proceedings and making the judgment illegal and void⁵. The failure to address jurisdiction or even waiver thereof does not imbue a court with jurisdiction not vested in it in

³ *Pakistan General Insurance Company Limited through Executive Vice-President Vs. Messrs Muslim Commercial Bank Ltd.*, 2015 CLD 600

⁴ *Ashiq Hussain Vs. Additional District Judge*, 1993 CLC 799; *Shaikh Muhammad Amjad Vs. The State*, 2002 P.Cr.L.J. 1317; *Amanullah Vs. The State*, PLD 2004 Quetta 105; *Pakistan General Insurance Company Limited through Executive Vice President Vs. Messrs Muslim Commercial Bank Ltd.*, 2015 CLD 600

⁵ *Amanullah Vs. The State*, PLD 2003 Quetta 11

law⁶. Therefore, it is necessary for this Court to determine the point of jurisdiction involved in the Subject Suit in the instant appeal notwithstanding that the Respondents/Defendants chose not to press it before the Trial Court.

27. The Subject Suit was filed by the Appellants/Plaintiffs alleging that they have been dispossessed of their possession over the Subject Plots at the hands of the Respondent/Defendant No. 1 which is a cooperative housing society. Thus, the Subject Suit involved a dispute touching the business of a society arising between the society impleaded as Respondent/Defendant No.1 and members of the society i.e. the Appellants/Plaintiffs and as such the dispute falls within the scope of Section 54(c) of the Cooperative Societies Act in view of which jurisdiction of civil courts is barred under Section 70A *ibid*⁷.

28. The plaintiffs in *Mrs. Parveen Akhtar and another Vs. Lucknow Cooperative Housing Society Ltd. through President/Chairman/Secretary and another, 2014 YLR 1539* were allottees of two plots which were cancelled who filed civil suits to challenge such cancellation. The defendant society filed an application under Order VII, Rule 11, CPC seeking rejection of plaint in view of the bar contained in Section 54 of the Cooperative Societies Act. The Sindh High Court at Karachi considered whether the plaint was maintainable in view of Sections 54, 70, and 70A of the Cooperative Societies Act and rejected the plaint by holding that the plaintiffs should have first taken their dispute with the society to the Registrar as per Section 54 and that if the plaintiffs were not willing to avail such remedy they were under a legal obligation to send notice to the Registrar pursuant to Section 70 before filing a civil suit against the society as follows:

"7. In section 54 of the Act, 1925, the requirement of law is that if disputes touches the business of a Society and it is between the Society and its member, it shall be referred to the Registrar and proviso to the section provides only one condition for instituting the suit against the Society that the Registrar himself has suspended the proceedings in the matter on the ground that the question at issue is one involving complicated questions of law and facts. Even this condition is limited to the period of six months from the date of Registrar's order of suspending the proceedings and in case the suit is not filed within six months, the Registrar is empowered to

⁶ Amanullah (*Supra*)

⁷ Syed Sultan Ali Vs. Sahibzada Frogh Najam Najmi, 2009 CLC 477; S.M. Tariq Khawaja Vs. Registrar Cooperative Societies, Islamabad, 2020 CLC 653; P.E.C.H. Society Limited Vs. Habib-ur-Razaq, 2021 CLC 2011

decide even complicated question of law and the facts. In the instant suit, the plaintiffs, in the first place, should have taken their dispute with the Society to the Registrar. Therefore, if at all the plaintiffs were not willing to avail arbitration in terms of section 54 of the Act, 1925 to redress their grievance on the alleged illegal cancellation of their plots and wanted to file suit against the Society, they were under legal obligation to send notice to the Registrar before filing the suit against the Society. The requirement of section 70 of the Act, 1925 was yet another obstacle in the way of the plaintiffs.

"70. Notice necessary in suits.--No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the Society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

8. *The plaintiffs have not sent any notice to the Registrar, Cooperative Societies that they are aggrieved by action of the Society and they propose to take the Society to the Court of law for redressal of their grievance. Learned counsel for the plaintiffs has no answer to the question that why the provisions of sections 54 and 70 of the Cooperative Societies Act, 1925 be ignored by this Court to entertain his plaint. The Courts are not supposed to assume the jurisdiction of competent forum available within the statute governing the issues and relations between the parties. In this case, the members of the Society when pitched against the Society on account of the action of cancellation of their plots by the Society and the Society claims to have done it during the course of its business, they have to follow the law governing the parties in such like situation. In the case in hand the parties are governed by the Cooperative Societies Act, 1925 and sections 54 and 70 provide first a statutory remedy of arbitration to the aggrieved party and then takes away jurisdiction of Civil Court to try such dispute of a civil nature. Both in section 54 and section 70 of the Act, 1925 the expressions used is the "dispute touching the business of the Society" is employed to oust the jurisdiction of Civil Court on the ground that cognizance of such civil dispute is to be taken by the arbitration panel of three arbitrators. Therefore, Civil Court cannot try and adjudicate the "dispute touching the business of a Society" as it falls within the exception in terms of the exception referred to in section 9 of the Civil Procedure Code, 1809 and it reads as under:--*

"9. Court to try all civil suits unless barred.--The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

Since there is a statutory forum to take cognizance of such dispute of civil nature this Court cannot usurp the power of such statutory forum.

...

13. *In view of the above discussion and the case-law cited, the plaint is rejected and all the pending applications are also dismissed." [Emphasis added].*

29. In the instant case, however, the Appellants/Plaintiffs did in fact take their dispute with the Respondent/Defendant No. 1/Cooperative Society to the Registrar as is evident from the Complaint dated 02-04-2012 written to the Chief Commissioner, ICT and copied to the

Respondents/Defendants No. 2 and 3 as Ex.P12, Ex.P13 and Ex.P14 whereby it was alleged that the Respondent/Defendant No. 1 has illegally raised construction on the Subject Plots thereby violating the Appellants/Plaintiffs ownership rights and prayed for assistance in regaining possession. The said Exhibits also bear receiving by the Respondents/Defendants No. 2 and 3 on 02-04-2012. Moreover, receipt thereof by the Respondents/Defendants No. 2 and 3 is also evident from the Notification dated 04.04.2017 issued by the Respondent/Defendant No.3 produced as part of Ex.P15, whereby in exercise of the powers under Section 54 of the Cooperative Societies read with Rule 33 of the Cooperative Societies Rules, 1927 the Assistant Commissioner (Sectt) ICT, Islamabad was appointed the Registrar's nominee to decide the case titled '*Mr. Sultan Ahmed Hassan House No. 15 Street No. 33 E-11/3 Islamabad VS. T & T Employees Cooperative Housing Society, Islamabad*' within 60 days. It is noteworthy that the Registrar's nominee was appointed five years after the Appellants/Plaintiffs Complaint to the Respondents No. 2 and 3. In the meantime the Appellants/Plaintiffs filed the Subject Suit on 10.11.2012.

30. The question that arises in the instant case is whether the Appellants/Plaintiffs were justified in filing the Subject Suit despite the dispute falling within the ambit of Section 54 of the Cooperative Societies Act if no action was taken by the Respondent/Defendant No. 2 with regard to the referral of their dispute for five years. The answer lies in Section 70 of the Cooperative Societies Act, which envisages filing of a suit in respect of any act touching the business of a society provided requisite notice of two months is served.

31. The interplay between Sections 54, 70, and 70A *ibid* has already been thoroughly discussed and the scheme of law explained by the Sindh High Court at Karachi in the cases of *Mst. Atia Khanum Vs. Messrs Saadabad Cooperative Housing Society Ltd.*, 2002 MLD 209, and *Abdul Salam Ansari Vs. Province of Sindh through Secretary*, 2012 CLC 350 as follows:

"11. The learned counsel for the defendant No.3 in addition to the above exposition of the affairs of the Society at the hands of the plaintiff very powerfully argued on the maintainability of the suit and asserted that it be nipped in the bud. Learned counsel in contending that the present suit was

not maintainable in view of sections 70 and 70A of Act 1925, firstly relied upon the case of Muhammad Ali, Memorial Cooperative Housing Society Karachi v. Syed Sibt-e-Hassan Kazmi (PLD 1975 Karachi 428) wherein it was held by a single Judge of this court that the provisions of section 70 of Act, 1925 are mandatory and in failure to give notice as required by such section renders the suit not maintainable even though the plaintiff have had a good or an unanswerable case and even if the award (which was the subject-matter of that suit) was void, still requirement of notice under section 70 persisted and keeping in view such mandatory provision in sight, the appeal was dismissed wherein order passed by the court below, dismissing the suit on the touchstone of section 70 of Act, 1925 had been dismissed. Second case that was relied upon by the learned counsel was Farida v. Prince Apartment Cooperative Housing Society and 2 others (1984 CLC 2914) where again a Single Judge of this court rejected the plaint by observing that mandatory provisions of section 70 of the Act having not been complied with, the suit was not maintainable by holding that sections 70 and 70A provide protection to a society registered under the 1925 Act for being sued in a court of law in respect of matter, determinable by the provincial government or its functionaries. The main reason for rejection of the plaint in the precedent cited that prevailed on the court was that since suit in respect of an act touching business of registered cooperative society without service of prescribed mandatory notice under section 70 of 1925 Act has not been served, the suit was not Maintainable. In the case of Zia-ur-Rehman Alvi v. Allahabad Cooperative Society Limited and 2 others (PLD 1995 Karachi 391), the third case that was relied upon by the learned counsel, yet again a Single Judge of this court rejected the plaint in the suit filed by Zia-ur-Rehman Alvi when it was brought to the notice of the court that the suit was filed without first serving notice under section 70 of 1925 Act though in such suit it was raised that a notice was sent to the Society but the same was non-suited inasmuch as that it was observed by the learned Single Judge that no specific notice as required under section 70 of the Act of 1925 was specifically sent and/or served on the defendant-society. It was further held in the cited precedent that since the dispute that was brought before the court touching the business of the society and therefore the bar contained under section 70A became applicable and therefore the court had no jurisdiction to entertain or adjudicate upon the dispute and that no saving has been provided expressly under the 1925 Act with reference to the disputes to be agitated before the court. In the fourth case of Mst. Atia Khanum v. Messrs Saadabad Cooperative Housing Society Ltd. and others (2002 MLD 209), relied upon by the learned counsel, it was held by a Single Judge of this court and quite exhaustively that: "if the jurisdiction of Court is totally barred, whether the provisions contained in section 70 shall become redundant, nugatory and otiose. My answer is in negative. As already observed while discussion the principles of interpretation of statutes, all the provisions in an enactment are to be considered in its totality so as to discern the intention of the legislature, without making any provision in the enactment as nugatory or redundant. Thus, when all the three sections 54, 70 and 70-A are read together, the scheme of the legislation which emerges, is as follows:

(a) By virtue of the provisions contained in section 70-A, the jurisdiction of Court is absolutely barred in respect of the matters mentioned in clauses (a), (b) and (c) of subsection (1) of section 70-A read with the provisions contained in section 54.

(b) Notwithstanding, the bar contained in section 70-A, the suit can be filed under the provisions expressly provided in the Cooperative Societies Act, 1925.

(c) One of the provisions expressly provided in the Act pertaining to the filing of suit by any party is contained in proviso to section 54. It envisages that any dispute touching the business of Society

shall be referred first to the Registrar and then if the Registrar is of the view that there is any question or issue involving complicated questions of law and fact, the Registrar may if he thinks fit suspend the proceedings in the matter, until the question has been tried by a regular suit instituted by one of the parties or by the Society. Thus, if any suit is filed under this provision neither any notice under section 70, shall be required to be served on the Registrar nor the jurisdiction of the Court shall be barred.

(d) The second express provision in the Act, is contained in section 70. Section 54 and section 70 are to be read together. As already observed, any dispute touching the business of a Society is to be referred to the Arbitration envisaged under section 54. However, the legislature has not left an aggrieved person completely at the mercy of Registrar, by enacting the provisions contained in section 70. Section 70 is couched in negative language which prima facie excludes the filing of suit against the Society or any of its officers in respect of any act touching the business of the Society and it is in consonance with the provisions contained in section 54 and section 70-A. But, thereafter an exception is provided which is to the effect that if after expiry of two months next after notice in writing has been delivered to the Registrar stating therein specifically the relief which a person claims and the Registrar does not initiate any arbitration proceedings then such inaction on the part of Registrar shall confer a right on aggrieved person to file a suit in the Court and the bar on the jurisdiction of the Court shall be lifted. Here it will be seen that when sections 54, 70 and 70-A are read together the wisdom of the legislature crystallises and we find that the intention of the legislature that the matter pertaining to the dispute touching the business of Society should normally and initially be referred to the Registrar and once the matter is referred and the Registrar initiates proceedings the jurisdiction of Courts is barred. However, if the Registrar fails, neglects or avoids to initiate proceedings, an aggrieved person shall serve a notice under section 70 and if Registrar initiates proceedings within a period of two months, the jurisdiction of the Court shall be barred and an aggrieved person shall have no right to institute a suit in the Court. Suit initiated if any shall be barred under section 70-A. Likewise if no notice under section 70 is delivered to the Registrar specifically stating the relief sought the suit shall not be maintainable." [Emphasis added].

32. I respectfully agree with the steps enumerated in *Mst. Atia Khanum (Supra)* and *Abdul Salam Ansari (Supra)* as reproduced in the excerpt herein above except as to the requirement of serving notice under Section 70 in case the Registrar fails, neglects or avoids to initiate proceedings upon referral of a dispute under Section 54 and to wait two months thereafter before filing a civil suit. With utmost respect, the difficulty in so reading the provisions of law under discussion is that no time period has been stipulated in the Cooperative Societies Act for the Registrar to initiate proceedings upon referral of a dispute under Section 54 nor any time period has been provided for resolution of such dispute. Thus it would be unclear as to how long a party is supposed to wait after

referring a dispute under Section 54 to the Registrar before serving notice under Section 70.

33. The object of notice under Section 70 *ibid* has been discussed in *Defence Housing Authority Lahore Vs. Messrs Builders and Developers (Pvt.) Ltd., 2015 SCMR 1799* and *Mst. Nishat Ishaq Vs. Amjad Khan, 2014 CLC 71*, wherein it was held that the object of delivery of notice under Section 70 and to make it mandatory is to provide the aggrieved parties in Cooperative Societies with an opportunity to resolve their disputes through the Registrar of the Society before resorting to formal litigation within the mandated two months' notice period. Thus, to the best of my understanding, when a dispute falling within the ambit of Section 54 is referred to the Registrar and the Registrar fails to initiate proceedings within two months, the party may file a civil suit without service of a fresh notice under Section 70 provided that the requirements of Section 70 are met by the complaint/petition/application/claim/notice issued under Section 54.

34. I am fortified in my view by the case of *Zia-ur-Rehman Alvi Vs. Messrs Allahabad Cooperative Housing Society Limited, PLD 1995 Karachi 399* in which the plaintiff sent a criminal complaint to the Magistrate, First Class, Complaint Cell, Karachi (East) and dispatched copy to a Deputy Registrar of Cooperative Societies, Karachi with the endorsement that it be treated as a legal notice and thereafter instituted a suit. The defendant society filed an application under Order VII, Rule 11, CPC seeking rejection of plaint for want of notice under Section 70 and suit being barred under Section 54 read with Section 70A of the Cooperative Societies Act. According to the plaintiff, however, the endorsement in the criminal complaint satisfied the requirement under Section 70 *ibid*. The Sindh High Court at Karachi observed that a plain reading of the section shows that the notice must state (i) cause of action; (ii) the name, description and place of residence of the plaintiff; and (iii) the relief which he claims. The Court evaluated the criminal complaint to determine whether it fulfilled the requirements of the aforesaid section and found that while it fulfilled the first and the second conditions but did not describe the reliefs claimed. The Court held that since the language of Section 70 makes it mandatory to serve notice, such notice cannot be

treated as conforming with the law unless all prerequisites are mentioned therein. Regardless of the end result however, the point to be noted for purposes of the case at hand is that the Court did not reject the proposition that the criminal complaint endorsed to the Deputy Registrar could be treated as notice under Section 70 of the Cooperative Societies Act provided all conditions as stipulated thereunder are met.

35. Therefore, it must be seen whether the contents of Appellants/Plaintiffs Complaint dated 02-04-2012 meet the requirements of Section 70 of the Cooperative Societies Act or not. Perusal of the Complaint dated 02-04-2012 shows that though it has been written only by the Appellant/Plaintiff No. 1 it is in respect of both the Subject Plots and provides the cause of action as well as the relief claimed. It also provides the name and address of the Appellant/Plaintiff No. 1 therefore all relevant particulars were given in respect thereof however such particulars regarding the Appellant/Plaintiff No. 2 are missing.

36. I also agree with *Zia-ur-Rehman Alvi (Supra)* that the provision of Section 70 of the Cooperative Societies Act must be strictly construed. This is because but for the notice under Section 70 a suit in respect of a dispute falling within the ambit of Section 54 is expressly barred under Section 70A. Since Section 70 provides an exception it must therefore be strictly adhered to. In view thereof, in my opinion the name of the Appellant/Plaintiff No. 2 was liable to be struck off under Order I, Rule 10, CPC⁸ and/or the Subject Suit was liable to be dismissed to the extent of the Appellant/Plaintiff No. 2 for failure to serve the mandatory notice under Section 70 of the Cooperative Societies Act prior to instituting the Subject Suit.

37. Coming back to the Appellant/Plaintiff No.1, the Subject Suit was instituted before the learned Trial Court on 10-11-2012, which was seven months after the Complaint dated 02-04-2014 i.e., well over the two month period as stipulated in Section 70 of the Cooperative Societies Act. The Appellants/Plaintiffs stated in paragraph 11 of the plaint filed in the Subject Suit that the matter was reported to the Respondents/Defendants No.2 and 3 but that they did not fulfill their obligations. Hence, the

⁸ *Province of the Punjab through Deputy Commissioner/District Collector, Rawalpindi Vs. Muhammad Akram, 2023 SCMR 755*

Appellant/Plaintiff No. 1's Complaint dated 02-04-2014 whereby the matter was referred to the Respondent/Defendant No. 2 was in compliance of all the requirements under Section 70 of the Cooperative Societies Act. As such there was no bar on the learned Trial Court under Sections 54, 70, and 70-A of the Cooperative Societies Act to exercise jurisdiction in respect of the Subject Suit to the extent of the Appellant/Plaintiff No. 1 and the plaint was not liable to be rejected under Order VII, Rule 11, CPC.

38. Having said that there is yet another aspect of the case. As mentioned above, Exhibit P15 shows that the Respondent/Defendant No.3 eventually issued Notification dated 04-04-2017 in exercise of the powers under Section 54 of the Cooperative Societies read with Rule 33 of the Cooperative Societies Rules, 1927 and appointed the Assistant Commissioner (Sectt) ICT, Islamabad as the Registrar's nominee to decide the case within 60 days. The Complaint was decided vide Order dated 28.04.2017 (produced as part of Ex.P15) in favour of the Appellants/Plaintiffs ex-parte.

39. The Appellants/Plaintiffs have filed additional documents in the instant appeal as C.M. 152/2023. The additional documents produced by the Appellants/Plaintiffs show that the Respondent/Defendant No.1 filed an appeal under Section 56 of the Cooperative Societies Act which according to the Appellants/Plaintiffs was time barred. Nevertheless the matter was remanded by the Respondent/Defendant No.2 vide Order dated 06.07.2017. After remand the Assistant Commissioner (Sectt) ICT, Islamabad decided the matter in favour of the Appellants/Plaintiffs yet once again by Order dated 24.10.2017 and directed the Respondent/Defendant No.1 to give back the Plots originally allotted to the Appellants/Plaintiffs. The Appellants/Plaintiffs has stated in the C.M. that they were asked by the Registrar's nominee to return the Order dated 24.10.2017 and that he tore the same upon return and fixed the matter for arbitration on 21.11.2017. In any event, in the meantime, the Additional Deputy Commissioner (East) ICT Islamabad was appointed as the Registrar's nominee vide Notification dated 15.11.2017, who passed Order dated 19.02.2018 directing the Respondent/Defendant No.1 to restore the Subject Plots to the Appellants/Plaintiffs once all the

outstanding dues have been paid by them and in case the same plots are not available then to adjust the Appellants/Plaintiffs with plots having same market value. The Appellants/Plaintiffs challenged the said Order dated 19.02.2018 vide W.P. No.2389/2022 before this Court which was later dismissed as withdrawn vide Order dated 27.06.2022.

40. Thus the aforementioned additional documents reflect that the Respondent/Defendant No.2 had already passed order dated 19.02.2018 prior to passage of the Impugned Judgment dated 15-09-2018 passed by the learned Trial Court. Order XLI, Rule 27 (1), CPC provides that parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the appellate court but the appellate court may, *inter alia*, allow such evidence or document to be produced for the reasons stated in clauses (a) or (b) thereof including *for any substantial cause*. It is the appellate court who is the sole judge to decide whether or not additional evidence may be allowed to be produced to enable the appellate court to pronounce judgment or for any other substantial cause as the need for additional evidence must be felt by the appellate court itself⁹.

41. In my view this Court cannot shut its eyes to such additional evidence and decide the instant appeal in ignorance thereof as such approach will most certainly give rise to multiplicity of litigation¹⁰. The foregoing is substantial enough cause to allow production of such additional documents in order to enable this Court to pronounce an effective judgment that puts an end to further litigation.

42. Before I factor in such additional evidence it is important to recall that in the instant case the Appellant/Plaintiff No. 1 initially referred his dispute with the Respondent/Defendant No. 1 to the Respondent/Defendant No. 2 as mandated by Section 54 of the Cooperative Societies Act. The Respondent/Defendant No. 2's failure to initiate action led the Appellant/Plaintiff No. 1 to the filing of the Subject Suit. In such circumstances, when the Respondent No. 3 appointed Respondent/Defendant No. 2's nominee, the Appellant/Plaintiff No. 1

⁹ *Rafique Ahmed Vs. Ashok Kumar*, 2017 CLC 317

¹⁰ *Amanullah Vs. Mst. Gulam Janat*, 1989 SCMR 547; *Atta Muhammad Qureshi Vs. Iqbal*, 1994 CLC 2417; *Hassan Vs. Hussain*, 1996 CLC 650; and *Parsotim Thakur Vs. Lal Mohar Thakur*, A.I.R. 1931 Privy Council 143

should have either withdrawn the Subject Suit or not proceeded before the Respondent/Defendant No. 2's nominee. Yet it is evident that proceedings pursuant to Section 54 of the Cooperative Societies Act were progressing in parallel to the Subject Suit before the learned Trial Court without objection from any of the parties concerned before either forum. Resultantly an order has been passed by the Respondent/Defendant No. 2's nominee whereas the Impugned Judgment was passed by the learned Trial Court subsequently and both decisions are in conflict with each other.

43. The doctrine of election is well entrenched in our jurisprudence which has been explained by the Supreme Court in *Chief Executive Officer NGCL, GENCO-III, TPS Muzafargarrah Vs. Khalid Umar Tariq Imran and others, 2024 SCMR 518* as follows:

“11. It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. **The choice to initiate and pursue one out of the available concurrent or co-existent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person.** Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/ action and or remedy, which in legal parlance is recognized as 'doctrine of election', which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2), C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res judicata as articulated in section 11, C.P.C. and its explanations. Reference in this regard may be made to the case of *Trading Corporation of Pakistan v. Devan Sugar Mills Limited and others (PLD 2018 Supreme Court 828)*.

Giving a choice to select a remedy from among several co-existent and/or concurrent remedies prevents the recourse to multiple or successive redressals of a singular wrong or impugned action. It also provides an opportunity for an aggrieved person to choose a remedy that best suits the given circumstances. Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another co-existent remedies.” [Emphases added].

44. The Appellant/Plaintiff No. 1 had already exhausted his remedy under Section 54 of the Cooperative Societies Act, pursuant to which an

order has been delivered that has determined the rights of the parties¹¹ and which has attained finality. The Appellant/Plaintiff No. 1 could not have been allowed to jump ship yet once again and to continue to pursue the Subject Suit nor to continue the instant appeal which is a continuation of the Subject Suit simply because he is not happy with the outcome of the proceedings earlier instituted.

45. In view of the foregoing, the instant RFA is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on this 7th day of May, 2024.

JUDGE

JUNAID

Approved for Reporting
Blue Slip added.

¹¹ *Muhammad Idrees Abbasi Vs. Syed Akbar Khan, 2022 CLC 1322*