

IN THE CIVIL COURT AT AHMEDABAD

SPECIAL CIVIL SUIT NO. 260 OF 2012.

**ORDER BELOW EX. 17 IN SPECIAL CIVIL SUIT NO.
260/2012**

1. The present application is filed on behalf of defendant No. 21 Bhagyam Green Co-operative Housing Society Ltd. under the provision of Order-7 Rule-11 of the Civil Procedure Code containing that admittedly the defendant No. 21 is a Society registered under Gujarat Co-operative Societies Act, 1961 and therefore, as per the mandatory provision of Section-167 of Gujarat Co-operative Societies Act, 1961 a notice is requires to be served and 60 days time shall have given to the Society. Here the plaintiff has not compiled the said provision and therefore the suit is requires to be dismissed against the defendant No. 21.

2. At the relevant time plaintiff has filed his objection against this application vide Exh. 28 and wherein it has been contended that the prayer of defendant No. 21 would not fall under the perview of Section 167 of Gujarat Co-operative Societies Act and Order-7 Rule 11(d) of the Civil Procedure Code and while misinterpreting the provision present defendant has filed this application and therefore same is require to be dismissed while avoiding special cost of the plaintiff.

3. Upon the pleadings I have heard learned Advocate Mr. N.P. Patel on behalf of defendant No. 21 and I have heard learned

Advocate Mr. R. G. Thakor on behalf of the plaintiff. I have also perused the relevant record of the suit.

4. On behalf of defendant No. 21 learned Advocate Mr. Patel has stated that it is an admitted fact on record that defendant No. 21 is a Society registered under the provision of Gujarat Co-operative Societies Act, 1961. It is also an admitted fact that before filing this suit plaintiff has not served notice which would have to be served under provision of Section 167 of the Gujarat Co-operative Societies Act and therefore, the provision of Order-7 Rule-11 would be applicable here and suit against defendant No. 21 be ordered to be dismissed. In support of his say learned Advocate Mr. Patel has relied upon the provision of Section 67 and also relied upon two citations of our Gujarat High Court viz. (1) 2006(3) GLR P. 1853 (2) 1993(2)GLH 351.

5. In reply to the arguments of the learned Advocate Mr. Patel on behalf of the plaintiff it has been strongly contended that provision of Section 167 of Gujarat Co-operative Societies Act could be applicable only in case of internal dispute of the Society business. But here plaintiff is a third party. He has challenged the registered sale-deed which has been entered in the name of several defendants and lastly the sale-deed in favour of defendant No. 21 Society which has been registered on dated 20th August, 2009 and therefore, prima facie it could not be believed that suit can be dismissed under provision of Order-7 Rule-11(d) of the Civil Procedure Code. It has been also submitted that the citations upon which defendant No. 21

has relied upon could not be applicable here because the factual aspect of both the citations are quite different from the factual aspect of the suit.

6. Looking to the entire facts on records here it seems that the defendant has filed this application under the provision of Order-7 Rule 11 (d) of the Civil Procedure Code before going into further discussion the relevant provision of Order -7 Rule-11 is requires to be re-produced here. It reads like this:-

Rejection of plaint - The plaint shall be rejected in the following cases :

- (a) where it does not disclose a cause of action ;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where it is not filed in duplicate];
- (e) where it is not filed in duplicate];
- (f) where the plaintiff fails to comply with the provisions of Rule 9];

7. On perusal of provision here, it seems that the present plaintiff has challenged the various documents, in respect of the land bearing Block/ Survey No. 696 and Block/ Survey No. 724 of village Bhat

Tal. Dascroi of Dist. Ahmedabad. In favour of various defendant and lastly the registered sale-deed bearing S. No. 7742 dated 20th August, 2009 has been entered in the name of present defendant No. 21 and also prayed to cancel the said document which has been entered without knowledge of plaintiff and as the property was of the ancestral one.

8. Now here the short question is requires to be decided is that whether the prayer of defendant No. 21 would fall under perveiw of Section 167 of Gujarat Co-operative Housing Society Act and Order-7, Rule-11 (d) of Civil Procedure Code or not. For that the relevant provision of Section 167 of Gujarat Co-operative Societies Act 1961 is requires to be reproduced here, it reads as under :-

Section 167 : Notice necessary in suits.

Save as otherwise provided in this Act, 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 plant shall contain a statement that such notice has been so delivered or left.

9. On perusal of Section 167 it has been provided that no suit shall be instituted against Society or any of its Officers in respect of any Act touching the business of the Society. Now the word

"touching the business of the Society" is requires to be interpreted here. Upon the factual aspect of the case as the plaintiff has pleaded that the subsequent documents registered in the name of defendant No. 21 is requires to be declared as null and void and therefore, prima facie it could not be presumed that there is internal dispute the plaintiff and defendant No. 21. Section 167 would only came into play where the dispute has been arisen between the members of the Society. Here plaintiff is not a member of the Society and therefore prima facie the prayer of the defendant No. 21 is not requires to be considered here.

10. In support of his say learned Advocate Mr. Patel has relied upon two citations :-

(1) 2006 (3) GLR P. 1853 :- Wherein case of Sterling Centre Premises Owners Co-operative Societies Ltd. V/s Nanubhai R. Shah the Hon'ble High Court has held that whether plaintiff is third party or not is not relevant or notice under section 167 is mandatory. On further perusal of the said judgment it transpires that Hon'ble Court has remanded the matter back to the Trial Court, while giving instruction that the Trial Court shall considered whether the dispute raised in the plaint touches business of the Society, and after considering the aforesaid aspect the learned Trial Judge is directed to decide the application at Exh. 26. Upon the facts it seems that when the Hon'ble Gujarat High Court has already remanded the matter for deciding the facts that whether the dispute raised in the plaint touches the business of the society or not the naturally facts of this citation could not help the defendant at this stage.

11. 1993(2) GLH 351 :- Wherein case of Anjar Municipality V/s Anjar Taluka Co-operative Society and others Hon'ble Gujarat High Court has taken the view that the paramount objection underline provision of Section 167 is to see that the Society is not unnecessarily dragged to court of law in the matter touching its business. Here the factual aspect of this case seems to be different from the factual aspect of this case because in the case before Hon'ble Gujarat High Court it was between Municipality and Taluka Co-operative Society here the third party has raised the dispute against the Society and therefore in my humble view as per the settled provision of Section 167 it could not be said that the suit filed against the defendant No. 21 could be said that it is touching the business of the Society and therefore, the arguments of learned Advocate Mr. Patel could not be entertained here.

12. Upon the entire discussion it seems that this application would not file under perview of the Order-7, Rule-11(B) of the Civil Procedure Code and same is requires to be dismissed and following final order is passed.

:- ORDER :-

1. This application is hereby dismissed.
2. No order as to costs.

Pronounced in the open court of this 23rd day of the July, 2013.

Date : 23/07/2013
Place : Ahmedabad

(M.V. Gohel)
Principal Senior Civil Judge
UIC - GJ00481
Ahmedabad (Rural)

