

IN THE COURT OF JUDGE, CO-OPERATIVE COURT, NAGPUR
(BEFORE SHRI. B. V. BURANDE, JUDGE)

Dispute C.C. No.	87/2022
Smt. Ruchira Sachin Sardeshpande, Nagpur.	Disputant
Vs.	
Sahara Urban Credit Co-operative Sanstha M. Nagpur & 3 others.	Opponents

ORDER BELOW EXH.14
(Passed on 4th February, 2023)

The opponent No.1 has filed the application under Order 7 Rule 11 (d) of Code of Civil Procedure, 1908 to reject the dispute on the ground that it is barred by law. Perused application, say filed by disputant at Exh.21, heard learned advocate for both parties.

2. The learned advocate for opponent Mr. G. K. Bhusari argued that, the disputant is not member of the opponent No.1 society. She has no locus standi filed the present dispute. The present dispute is filed for relief of cancellation of mortgage deed dated 6/5/2014 executed by Late Vanita Madhukar Sardeshpande in favour of opponent society. The disputant has not filed any document which shows that she is legal heir of late Vanita. Further the declaration is sought that said mortgage deed be declared null and void. The declaratory relief claim in the dispute can not be granted by this court as per Section 31 of Specific Relief Act. The Civil Court have jurisdiction to decide the dispute. The parties to the dispute are not those specified in

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Section 91 of Maharashtra Co-operative Societies Act. The matter in dispute does not touch the management or business of the society. Further learned advocate has relied on judgment of Hon'ble Bombay High Court in the case of **Alok Agrawal & others Vs. Punam Co-op. Housing Society Ltd. and others**, reported in 2013(1) Mh.L.J. 104. Finally learned advocate has prayed to allow the application.

3. The learned advocate for the disputant Mr. S. Ramaswami submitted that, the Vanita is mother-in-law of disputant. The Vanita executed will deed in favour of disputant and she is legal heir of Vanita. Therefore the disputant have right to file dispute being legal heir of deceased member. In the present matter dispute touches to the business and management of the society. The present application is filed only to consume the time. The Vanita along with opponent Nos. 2 & 3 availed loan of Rs.15,00,000/- each and fraudulently property of Vanita only mortgaged. The disputant being sole heir of Vanita became owner of the property. The loan of Rs.15,00,000/- was obtained by Vanita but mortgage deed was executed for the amount of Rs.45,00,000/-. The disputant is aggrieved party and this Court has jurisdiction to try the present dispute. Finally learned advocate has prayed to reject the application.

4. Considering application, say, argument advanced by learned advocate for both parties following points arise for my determination, I have recorded my findings along with reason thereon as under.

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Sr. No.	Points	Findings
1	Whether dispute is liable to be rejected as per Order 7 Rule 11 (d) of Code of Civil Procedure ?	In the Affirmative.
2	Whether dispute is maintainable under Section 91 of M.C.S. Act ?	In the Negative.
3	What order ?	As per final order.

Reasons :

As to points no. 1 to 3.

5. It is not disputed that, the opponent Sahara Urban Credit Co-op. Sanstha M. Nagpur is registered as per provisions of M.C.S Act. The present dispute is filed for relief that mortgage deed dated 6/5/2014 executed by Vanita in favour of opponent No.1 society is vide and not binding on disputant. Further the loan account of Vanita is close on 9/9/2017. The disputant sought declaration that house property No.204 is free from any encumbrance of opponent No.1. The said mortgage deed is challenged on various grounds by the disputant.

6. The main relief sought by the disputant is cancellation of mortgage deed executed by Vanita in favour of opponent society. Now question is whether relief of cancellation of mortgage deed can be granted by this Court. The learned advocate for opponent has relied on judgment in the case of **Alok Agrawal** wherein Hon'ble High Court held that, declaratory relief can not be granted by Co-operative Court which relates to declaration in respect of agreement as null and void and unenforceable. The

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power which is conferred upon Civil Court under Section 31 (1) of Specific Relief Act, order in cancellation of written instrument evidently not vested in the Co-operative Court. The High Court referred judgment of Hon'ble Supreme Court in the **Remeshchand Ardawatiya Vs. Anil Panjwani**, AIR 2003 SC 2508 wherein where the provisions of section 75 of the Rajasthan Co-operative Societies Act 1965 came up for consideration. Section 75 conferred jurisdiction on the Registrar, notwithstanding anything contained in any law for the time being in force in respect of disputes touching the constitution, management or the business of a co-operative society arising inter alia between members, or past members or between the society or its committee and any past committee. The Supreme Court held that a suit for declaration of title, or possessory title or for that matter seeking the restoration of possession would fall within the inherent jurisdiction of the Civil Court and would not be governed by section 75. In that regard the Supreme Court held as follows :

"The plaint as framed by the plaintiff is for declaration of title as owner (and in the alternative, his possessory title) and seeking restoration of possession, as also issuance of mandatory and preventive injunctions against a recent encroachment. Neither is it a dispute between the parties referred to in Clauses (a) to (e) of sub-section (1) of section 75, nor does the nature of the dispute fall in Clauses (a) to (c) of sub section (2) of section 75 so as to be one excluded from the domain of a Civil Court".

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7. Section 31 of the Specific Relief Act 1963 provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that if such instrument is left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. The power which is conferred upon the Civil Court under Section 31(1) of ordering cancellation of a written instrument is evidently not vested in the Co-operative Court constituted under the M.C.S Act 1960. It is well settled that the jurisdiction which is conferred on a Civil Court under Section 9 of the Code of Civil Procedure 1908 to try all suits of civil nature can be abrogated only by an express provision of the statute or where it is impliedly barred. The provisions of Section 91 of the M.C.S. Act 1960 do not either expressly or by necessary implication confer jurisdiction on the Co-operative Court to grant declaratory relief especially of the nature referable as in the present case to Section 31 of the Specific Relief Act 1963.

8. In the case of **Alok Agrawal** the relief of declaration that, agreement dated 30/5/2007 is null and void and unenforceable was sought. The Hon'ble High Court held that, declaratory relief of this nature can not be granted by the Co-operative Court. The Hon'ble High Court referred Section 31 of Specific Relief Act. The power which is conferred upon the Civil Court under Section 31 (1) of ordering cancellation of a written instrument is evidently not vested in the Co-operative Court.

9. The Section 91 of M.C.S. Act, 1960 provides that, -

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"91. Disputes (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, 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 co-operative Court if both the parties thereto are one or other of the following:-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a de-registered society.

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society."

10. Before a dispute can be referred to a Co-operative Court under the provisions of Section 91 of M.C.S. Act, 1960, 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 belong to any of the categories specified in clauses (a) to (e) of Sub Section (1) of the said Section. If above to requirement are not satisfied, then dispute can not be adjudicated by Co-operative Court.

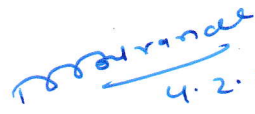
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11. In the present case, the disputant sought relief of cancellation of mortgage deed executed in favour of opponent. The relief of cancellation can only be granted by Civil Court as per Section 31 (1) of Specific Relief Act as held by Hon'ble Bombay High Court in the case of **Alok Agrawal**. Moreover the disputant is not member of opponent society. The parties to the dispute do not belong to any of the categories specified in clauses (a) to (e) of Section 91 of M.C.S. Act. Therefore plaint in present case needs to be returned to the disputant for filing it before Civil Court. The ratio of the Supreme Court in case of **Ardawatiya** and **Alok Agrawal** is applicable to the present case. Considering above discussion the application filed by opponent deserves to be allowed. Hence I answer the point no.1 in the Affirmative and point No.2 in the Negative and in answer to point No.3, I proceed to pass the following order :

-: O R D E R :-

- (i) The application Exh.14 stands allowed.
- (ii) The dispute application and all documents be return to the disputant for filing it before Civil Court.
- (iii) Under Rule 10A of Order 7 this court further directs that both parties shall appear before the Civil Judge (Senior Division) court, Nagpur.

Nagpur.
Dated : 4/2/2023.


(Shri. B. V. Burande)
Judge,
Co-operative Court, Nagpur.