

A MARGRET ALMEIDA & ORS. ETC. ETC.

v.

THE BOMBAY CATHOLIC CO-OPERATIVE HOUSING
SOCIETY LTD. & ORS. ETC. ETC.
(Civil Appeal Nos. 1175-1177 of 2012)

B JANUARY 30, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Co-operative Societies:

- C *Maharashtra Co-operative Societies Act, 1960 – ss. 91 and 163 – Maintainability of suits – Initiation of proceedings for the division of the Co-operative Society by tenant members (including appellant) – Meanwhile, resolution passed by General Body of the Society in favour of respondents (3rd party) – Dispute arising out of a decision of the society to alienate the property of the society – Suits filed by appellants and others before the High Court – High Court holding the suits not maintainable on the ground that the dispute was amenable to the exclusive jurisdiction u/s. 91 to the Co-operative Court – Sustainability of – Held: Not sustainable – s. 94 (3)(a) does not enable a person other than enumerated persons (specified under clauses (a) to (e) to subsection (1) of s. 91) to refer a dispute to Co-operative Court – Property in which the 3rd party acquired interest must bear some relationship with the dispute pending before the tribunal – To hold otherwise would be to enable the Co-operative Court to examine questions unconnected with the dispute pending before it and wholly unconnected with the affairs of the Society – From the language of the sub section (3)(a) to Section 94*
- D *it is clear that the legislature intended the Co-operative Court to deal with only the cases of acquisition of interest in the property during the pendency of the litigation before it – If any party such as the appellants disputes the validity of the title conveyed thereunder, necessarily such a dispute would have*
- E *366*

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to be adjudicated by a competent court u/s. 9 CPC wherein, necessarily, the question whether a valid title was conveyed in favour of 3rd party by the society would arise for determination – Thus, the order passed by the High Court set aside – Suits are maintainable and are to be tried by the High Court in exercise of its original jurisdiction – Code of Civil Procedure, 1908 – s. 9.

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First respondent is a Housing Co-operative Society. The society has different classes of members known as owners, lessees, allottees, tenants etc. Some of the tenant members including appellants of the Society initiated proceedings for the division of the Society, invoking Section 18 of the Maharashtra Co-operative Societies Act, 1960 by making an application to the Registrar. Me while, the General Body of the Society passed a resolution to sell the said land in favour of respondent Nos. 22 and 23. Thereafter, a sale deed/conveyance was executed. The appellants filed two suits seeking declarations that a resolution of first respondent Society and Conveyance executed on behalf of the first respondent Society in favour of respondent Nos. 22 and 23 is illegal and void *ab initio* in the alternative voidable against the plaintiffs of whom some are appellants (tenant members). The plaintiffs also filed an interlocutory application seeking an interim order. The defendants raised a preliminary objection regarding the maintainability of the suits in view of Sections 91 and 163 of the Act. The High Court held that the two suits are not maintainable in view of the provisions of Sections 91 and 163 of the Act. Therefore, the appellants filed the instant appeals.

Disposing of the appeals, the Court

HELD: 1.1. The Civil Court's jurisdiction to adjudicate civil disputes is unlimited, subject only to the limitations imposed by law either expressly or by necessary

- A implications. Section 163 of the Maharashtra Co-operative Societies Act, 1960 bars the jurisdiction of Civil and Revenue Courts. Section 163(1)(b) and Section 91(3) are complimentary to each other. Section 163 only excludes the jurisdiction of the Civil Court with reference to the
- B disputes arising out of the registration. A dispute arising out of a decision of the society to alienate the property of the society is not expressly covered under Section 163 of the Act. [Paras 16, 17, 18 and 19] [380-G-H; 382-B-E-F]
- C 1.2. Section 91 makes it mandatory that certain disputes, the nature of which is specified in the said sub-section, be referred to the 'Co-operative Court' as defined under Section 2(10-a ii). Such reference is required to be made by "any of the parties to the dispute". The Section also specifies the nature/subject matter of dispute which is required to be referred to the Co-operative Courts. They are "disputes touching" the (1) Constitution of the society; (2) Elections of the "Committee or its officers"; (3) Conduct General Meetings; (4) Management of the society or (5) Business of the society. Section 91 also stipulates that the disputes which are mandatorily required to be referred to the Co-operative Court for an adjudication must also be disputes arising between the parties to the dispute who should belong to one or the other categories specified under clauses (a) to (e) to sub-section (1) (enumerated persons). It can be seen from the scheme of Section 91, to confer exclusive jurisdiction on the Co-operative Court, the dispute must satisfy two requirements. Both the subject matter as well as the parties to the dispute must be those specified under the
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examined. Similarly, if it is found in a given case that the subject matter of dispute is not covered by Section 91, an enquiry into the question whether the parties to the dispute fall under any of the categories enumerated under Section 91 would become irrelevant. [Paras 21 and 22] [384-A-F; 385-B-C]

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Marine Times Publications (P) Ltd. vs. Shriram Transport & Finance Co. Ltd. (1991) 1 SCC 469: 1990 (2) Suppl. SCR 466 – referred to.

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1.3. When Section 91(1)(c) stipulates that persons other than the members of the society with whom the society has any transaction as one of the classes of persons who could be parties to a dispute amenable exclusively to the jurisdiction of the Co-operative Court, such a class is not an unqualified class. The said sub-section further qualifies the said class by expressly mentioning that the transactions of such persons with a society should be transactions “in respect of which restrictions and Regulations have been made or prescribed under Sections 43, 44, or 45 of the Act”. [Para 24] [385-H; 386-A-C]

1.4. Where Section 91 (1) (c) speaks of persons other than the members of the society, it is actually referring to persons other than the members of the society who have deposited money with the society or who have either lent or borrowed money from the society in accordance with the provisions of Sections 43 and 44 and subject to the conditions and limitations if any prescribed with reference to such lending to or borrowing from the society. [Para 29] [387-G-H; 388-A]

1.5. Section 94 (1) enumerates the powers of the Cooperative Court. The substance of sub-section (3)(a) is that if the Co-operative Court in the course of adjudication of a dispute is satisfied that any person

- A other than a party to the dispute "has acquired any interest in the property of a party to a dispute", then the Co-operative Court is empowered to implead such a 3rd party as a party to the dispute. Such a 3rd party may or may not even be a member of the society. The sub-section further declares such an impleaded 3rd party to be bound by the decision of the Co-operative Court. [Para 30] [388-B-F-G]

- 1.6. The submission that the scheme and language of Section 94(3)(a) makes it beyond doubt that the Co-operative Court's jurisdiction to adjudicate the dispute is not confined only to the disputes between the various classes of persons enumerated under Section 91 alone but extends to others also if such a 3rd party (even in a case where he happen to be a non-member) acquires some interest in the property of either the society or the members or any other person enumerated in Section 91 cannot be accepted. If really the legislature intended that the Co-operative Court should have jurisdiction in all the disputes irrespective of the nature of the dispute arising between the various classes of persons enumerated in Section 91 and non-member 3rd parties who acquire any interest in the property of such enumerated persons, the Legislature could have clearly indicated the same in Section 91 itself. Section 94(3)(a) does not enable a person other than an enumerated person to refer a dispute to the Co-operative Court. [Para 32] [389-C-D]
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Marine Times Publications (P) Ltd. vs. Shriram Transport & Finance Co. Ltd. (1991) 1 SCC 469: 1990 (2) Suppl. SCR 466 – referred to.

- 1.7. Accepting the submission would lead to a situation that while on one hand it is the settled position of law that the Act does not permit a person other than the one enumerated under Section 91 to seek adjudication of his dispute with 'enumerated persons' in
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a Co-operative Court, such a Court would be authorised by virtue of Section 94(3)(a) to adjudicate a dispute between an enumerated person and a non-member 3rd party, if raised by an enumerated person. On the other hand, from the language of the said sub-section, it appears that the only circumstance which enables the Co-operative Court to exercise its jurisdiction against such a 3rd party is that while adjudicating a dispute which is otherwise amenable to its jurisdiction, the Co-operative Court reaches the conclusion that a 3rd party acquired some interest in the property of one of the parties to the dispute. [Para 33] [389-G-H; 390-A-B]

1.8. As regards the question whether the property referred to in the sub-section is any property of one of the parties to the dispute or should such property bear any relationship to the dispute, the property in which the 3rd party acquired interest must bear some relationship with the dispute pending before the tribunal. To hold otherwise would be to enable the Co-operative Court to examine questions unconnected with the dispute pending before it and wholly unconnected with the affairs of the Society. An illogical result to be normally avoided unless compelled by the express language of the Act. [Para 34] [390-A-B; D-E]

1.9. As regards the second question whether the acquisition of the interest referred to should be anterior to the reference of the dispute to the Co-operative Court or on acquisition made during the pendency of the litigation, having regard to the language of Section 94, sub-section (3)(a), more specifically "has acquired any interest", the acquisition of the interest contemplated is only an acquisition made during the pendency of the dispute before the Co-operative Court. For the reason that such an acquisition of interest is qualified by the words, "in the property of a person who is a party to the

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- A dispute", it is held so for another reason also. [Paras 35 & 36] [390-F-H; 391-A]
- 1.10. To hold otherwise would lead to a situation where a dispute between an enumerated person and a 3rd party would become amenable to the jurisdiction of the Co-operative Court at the instance of the persons enumerated under Section 91 but not at the instance of a 3rd party. An absurd situation, *ex facie* violative of Article 14, in as much as such a construction would lead to a situation that with reference to a dispute, the affected parties are compelled to approach different fora for the adjudication of the same dispute depending upon the fact which party is seeking a relief. Such a construction, being inconsistent with a constitutional mandate, is impermissible. [Para 37] [391-B-D]
- D 1.11. For coming to the conclusion that the suits in question are not maintainable and the dispute could be examined exclusively by the Co-operative Court, the High Court proceeded on the basis that it is possible to challenge the resolution and the conveyance independently. Starting from such a premise, the High Court opined that challenge alone to the resolution without challenging the conveyance is possible but not vice-versa. It is presumed that it is possible for the plaintiffs, appellants to challenge only the general body resolution; that the conclusion arrived at by the High Court that if the general body resolution is set aside, the same would impair the validity of the conveyance even without an appropriate declaration by a competent judicial body. If the resolution alone is challenged before the Co-operative Court, the respondents 22 and 23 (the beneficiaries of the resolution) could not be made parties before the Co-operative Court. In such a situation, even if the Co-operative Court came to the conclusion that the resolution is illegal, it would always be open for the respondents 22 and 23 to ignore such a determination as

they are not parties to the proceedings and assert their title on the basis of the conveyance. If any party such as the plaintiffs (the appellants) disputes the validity of the title conveyed thereunder, necessarily such a dispute would have to be adjudicated by a competent Court under Section 9 of the Code of Civil Procedure wherein, necessarily, the question whether a valid title was conveyed in favour of respondents 22 and 23 by the society would arise for determination. The legality of the resolution would still have to be gone into again. Therefore, the premise in which the High Court commenced its enquiry itself is wrong. [Para 38] [391-F; 392-C-H]

1.12. The conclusion of the High Court that the suits in question are not maintainable on the ground that the dispute is amenable to the exclusive jurisdiction under Section 91 of the Act to the Co-operative Court cannot be sustained and is set aside. [Para 39] [393-A-B]

1.13. As regards the question whether the High Court was right in going into the maintainability of the suits, it was submitted that in view of the provisions contained in Section 9A of the Code of Civil Procedure which was introduced by local amendment of the Maharashtra Legislature to the Code by Maharashtra Act No.65 of 1977, the course of action followed by the High Court is not only justified. but also the court is obliged to follow such a course of action. The language of Section 9A is self-explanatory. The submission is accepted. [Para 40] [393-C-D; 394-B]

1.14. As regards the interim order, the suits are maintainable and having regard to the fact that the suits are to be tried by the High Court in exercise of its original jurisdiction, no interim order is passed and it is left open to the High Court to consider the applications filed by the plaintiffs for interim orders in accordance with law and

- A pass appropriate orders. The principles governing the grant of interim orders are well settled. However, on the question of the existence of a *prima facie* case in favour of the plaintiffs, the following factors are germane and require to be examined. Having regard to the content of
- B the plaint, the nature of the legal right, the plaintiffs claim for seeking the relief such as the one sought in the suits necessarily depends upon the byelaws of the Society, the rights and obligations of the various classes of its members with respect to the property in dispute. The
- C High Court may examine the said aspects before passing an appropriate interim order. All the parties are directed to maintain *status quo* to enable the High Court to examine the applications of the plaintiffs for interim orders and pass appropriate orders in accordance with law. [Paras 41 and 42] [394-C-G]
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Case Law Reference:

- 1990 (2) Suppl. SCR 466 Referred to Para 22
- E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1175-1176 of 2012.

- From the Judgment & Order dated 29.8.2011 of the High Court of Judicature at Bombay in Appeal Nos. 413, 489, 573 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010.

WITH

- C.A. Nos. 1178 & 1179-1180 of 2012.
- G H.N. Salve, Mukul Rohtagi, Dr. A.M. Singhvi, Jaibeer Shergill, Shally Bhasin Maheshwari for the Appellants.

- K.K. Venugopal, L.N. Rao, Shyam Dewan, C.A. Sundaram, Abhinav Vashist, Chetan Kapadia, Vatsal Merchant, Pratap Venugopal, Purushottam Kumar Jha, Gaurav Nair, Namrata
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COOP. HOUSING SOCIETY LTD.

Soud, Prerna Kumari, Sumer Associates & Robin, K.J. John & Co, P.S. Sudheer, Rishi Maheshwari, C.D. Mehta, Vineet B. Nair, Nikhil Nayyar, TVS Raghavendra, Sreyas, P. Srikumar, Lalan Gupta, J.P. Sen Savitri Daditch, Garima, Prasad, E.C. Agrawala for the Respondent.

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The Judgment of the Court was delivered by

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CHELAMESWAR, J. 1. Leave granted.

2. These appeals arise out of a common order dated 29th August, 2011 of the Division Bench of the Bombay High Court passed in three writ petitions and two suits, 144 and 145 of 2010.

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3. By the said common order, it was held, among other things, that the two suits are not maintainable in view of the provisions of Sections 91 and 163 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter 'the Act', for short). We are not concerned with the remaining part of the Division Bench's judgment as the instant special leave petitions are preferred only against that part of the Division Bench's judgment. The brief factual background of this litigation is as follows.

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4. The first respondent is a Society which was originally incorporated in the year 1914. The full particulars of such incorporation are not available at this juncture on record and are also not necessary for the present purpose. It is sufficient to state that it is admitted on all hands that it is a housing cooperative society and the Act governs the affairs of the said Society.

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4. The first respondent is a Society which was originally incorporated in the year 1914. The full particulars of such incorporation are not available at this juncture on record and are also not necessary for the present purpose. It is sufficient to state that it is admitted on all hands that it is a housing cooperative society and the Act governs the affairs of the said Society.

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5. It is also an admitted fact on all hands that the said Society has different classes of members known as owners, lessees, allottees, tenants, etc. It is also an admitted fact that the total membership is 762 out of which 69 members fall under the classification of tenant members. However, the exact rights and obligations of these various classes of members, vis-à-vis

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- A the first respondent Society or these various classes of members inter se are also not available on record.
- 6. It appears from the record that, as on today, the first respondent Society owns an extent of approximately 21,774.10 sq. mts. of land in the city of Mumbai alongwith structures popularly known as Wellington Catholic Colony. It appears that the said property was part of a larger parcel of land earlier owned by the first respondent Society but is not owned by the Society now. Some of the 'tenant members' (including the appellants herein) of the Society initiated proceedings for the division of the Society sometime in the year 1970 invoking Section 18 of the Act by making an application to the Registrar. The said application has a very long and chequered history, the details of which are not necessary for the present purpose except to state that by virtue of the judgment under appeal, the application is still open and pending.

- 7. In the meanwhile, in a resolution came to be passed on the 6th December, 2009 by the General Body of the Society to sell the above mentioned land in favour of respondents E No.22 and 23. In furtherance of the said resolution, a sale deed/conveyance came to be executed on 7th December, 2009. Aggrieved by the said resolution and the sale, two suits 144 and 145/2010 came to be filed invoking the original jurisdiction of the Bombay High Court. A copy of the plaint in the suit F No.145/2010 is placed on record in these SLPs. The principal prayer in both the civil suits is

- "(a) for a declaration that the said Resolution dated 6th December, 2009 (Exhibit 'K' hereto) and the said Conveyance dated 7th December, 2009 (Exhibit 'M' hereto) are invalid, illegal and void ab initio and/or the same are voidable as against the Plaintiffs and the Tenant members of Defendant No.17 Association;
- H (a-i) That this Hon'ble Court be pleased to pass Order declaring Section 164 of Maharashtra Co-operative

Societies Act, 12 Violation of Article 14 of the Constitution A
of India and the same ought to be struck down."

It can be seen from prayer (a) extracted above that the plaintiffs seek in effect two declarations – (i) that a resolution dated 6th November, 2009 of the first respondent Society, and (ii) a Conveyance dated 7th December, 2009 executed on behalf of the first respondent Society in favour of respondents 22 and 23, are either illegal, *void ab initio* or in the alternative that they are voidable as against the plaintiffs (of whom at least some) are the appellants herein and claim to be the tenant members of the respondent society (we may state here that there is a dispute regarding the membership of some of the appellants herein but, for the present case, we do not go into the dispute but refer the appellants, only for the sake of convenience, as 'tenant members'). The substance of the factual and legal basis (asserted in the plaint) on which the plaintiffs seek the two declarations (referred to earlier) in the civil suits, and argued at the Bar is that the 'tenant members' alone have the right, title and interest over the property sought to be sold by the impugned conveyance dated 7th December, 2009 and that the other members of the Society have no right, title or interest in the property in dispute. The plaintiffs expect an order of bifurcation of the respondent No.1 Society and also to get a declaration in their favour of the right, title and interest in the property in dispute. The plaintiffs also therefore claimed appropriate interim orders regarding the property during the pendency of the suits.

8. The defendants raised a preliminary objection regarding the maintainability of the suits in view of Sections 91 and 163 of the Act which was rejected by a learned single judge but found favour with the Division Bench of the Bombay High Court resulting in that part of the judgment which is under appeal now.

9. By the judgment under appeal it is held that:

"In our opinion, therefore, what is principally challenged in H

- A the Civil Suit is the resolution of the general body. And challenge to the conveyance is ancillary”

And therefore opined:

- B “That the Plaintiffs could have filed the dispute before the Co-operative Court challenging the resolution of the General Body and the consequent execution of conveyance in favour of M/s. Sumer associates and could have joined M/s. Sumer associates as a Defendant in that dispute. In our opinion thus the entire subject matter of the Civil Suit could have been the subject matter of the dispute filed under Section 91.”

10. Shri Mukul Rohtagi and Dr. Abhishek M. Singhvi, learned senior counsel appearing for the appellants argued that irrespective of the fact whether a declaration regarding illegality of the impugned resolution dated 6th December, 2009 could be granted by the ordinary civil courts in view of Section 91 of the Act, a declaration regarding the voidness of the impugned conveyance dated 7th December, 2009 could only be given by a competent civil court contemplated under Section 9 of the Code of Civil Procedure (hereinafter ‘the Code’ for short) because such conveyance is in favour of a person who is not a member of the Society. It is submitted that the ultimate dispute and grievance of the plaintiffs is against the alienation of the property in favour of the respondents 22 and 23 herein by the impugned conveyance which has the effect of depriving the plaintiffs of their right, title and interest in the property in dispute. Such a conveyance could only be declared illegal and void ab initio by a competent civil court contemplated under Section 9 of the Code. The impugned resolution, which purportedly authorises the sale of the property covered by the impugned conveyance, by itself does not transfer or create any interest in the property adverse to the interest of the plaintiffs. Therefore, even if it is assumed that the legality of the impugned resolution is amenable to the jurisdiction of the Co-operative Court
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functioning under Section 91, the suits in question could not have been held to be not maintainable as the jurisdiction to adjudicate upon the incidental question regarding the impugned resolution dated 6th December, 2009 would stand subsumed by the jurisdiction of the competent civil court which alone is competent to decide the legality of the impugned conveyance dated 7th December, 2009. The learned counsel further argued that the ouster of the jurisdiction conferred on the Civil Courts under Section 9 of the Code is to be conceded only where there is an express exclusion by the language of the Statute or if such an ouster arises by a necessary implication from the Scheme of a particular Statute. It is argued that there is nothing either in the language of Section 91 or the Scheme of the Act which would lead to a conclusion that the jurisdiction conferred under Section 9 of the Code is excluded to adjudicate the suits in question.

11. On the question of interim order during the pendency of the suits, the learned counsel argued that in view of the pendency of the claim of the plaintiff for the bifurcation of the respondent society (and according to the appellants, they have a very strong case), the disputed property must be preserved as it is and the balance of convenience is in favour of the appellants. The learned counsel argued that the High Court grossly erred in examining the maintainability of the suits in the interlocutory application filed by the plaintiff seeking interim order.

12. On the other hand, learned senior counsel Shri C.A. Sundaram appearing for the respondents argued that the language of Section 91, sub-section 1(c) of the Act clearly indicates that the jurisdiction of the Co-operative Court contemplated under Section 91 is not confined only to the adjudication of the disputes between the society and its members or servants etc. enumerated in Section 91(1)(a), (b), (d) and (e) but also extends to the disputes where one of the

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A parties to the dispute is a person other than a member of the society.

13. According to the learned counsel, such conclusion is irresistible from the language of Section 91(1) (c) and Section

B 94 (3) (a). Hence, the judgment under appeal does not call for any interference.

14. Shri K.K. Venugopal, learned senior counsel submitted that the course adopted by the Bombay High Court in examining the maintainability of the suits in the Interlocutory Application

C filed by the plaintiffs is not only justified but also mandatory in view of the language of Section 9A of the Civil Procedure Code inserted by the State Legislation of Maharashtra.

15. On the question of interim arrangement to be made D during the pendency of the suit, learned counsel for the respondent submitted that the suit itself is based on the expectancy that the tenant Members would succeed in their application for the bifurcation of the society, and upon bifurcation, the tenant members would be entitled for the E exclusive title and possession of the disputed property. Even if the above mentioned understanding of the plaintiff's is right since the plaintiffs are only some of the tenant members of the society, they would not be entitled for the title and possession of the entire disputed property, but only a part of it. It is argued that since other tenant members have no objection to the F alienation of the property in dispute in favour of the respondent no. 22 and 23, impeding of conveyance dated 7th December, 2009 would not be justified as the impugned resolution and the conveyance have made adequate provisions for safeguarding the interest (if any) of the appellants.

G 16. We shall now examine the issue of maintainability of the suits. As rightly contended by the learned counsel for the appellants the Civil Court's jurisdiction to adjudicate Civil disputes is unlimited, subject only to the limitations imposed by H law either expressly or by necessary implications. The law in

this regard is well settled and needs no elaboration. Therefore, it becomes necessary for us to examine whether there is anything in the language of Section 91 or Section 163 which expressly excludes the jurisdiction of the Civil Courts in the context of the suits in question. Section 163 of the Act bars the jurisdiction of Civil and Revenue Courts reads as follows:

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“163. Bar of jurisdiction of Courts.

(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of

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(a) the registration of a society or its by-laws or the amendments of its by-laws or the dissolution of the committee of a society, or the management of the society on dissolution thereof: or

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(b) any dispute required to be referred to the Co-operative Court for decision.

(c) any matter concerned with the winding up and dissolution of a society.

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(2) while a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by the leave of the Registrar, and subject to such terms as he may impose.

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(3) all orders, decisions or awards passed in accordance with the Act or the Rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever.”

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17. Section 163 (1)(b) and Section 91 (3) are complimentary to each other. Section 91(3) reads as follows:

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- A "Save as otherwise provided under "sub-section (2) to section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)"
- B 18. It can be seen that the Section 163 only excludes the jurisdiction of the Civil Court with reference to the disputes arising out of the registration:-
 - (1) Registration of the society;
 - (2) Disputes relating to the bye-laws of the society;
 - (3) Dissolution of the Committee of the society;
 - (4) Management of the society on dissolution of the society;
- D (5) Any disputes which is required to be referred to the Co-operative Court under Section 91.;
- E (6) Any matter concerned with the winding up and dissolution of the society etc.
- F 19. A dispute arising out of a decision of the society to alienate the property of the society, in our opinion, is not expressly covered under Section 163 of the Act. It is to be examined whether it is a matter which is required to be resolved by the Co-operative Court by virtue of the provisions under Section 91 of the Act. In view of the conclusion of the High Court that "the entire subject matter of the civil suit could have been the subject matter of dispute filed under Section 91."
- G 20. It is necessary to examine the scope of Section 91(1), which reads as follows
 - (1) Notwithstanding anything contained in any other law for the time being in force any dispute touching the Constitution, (Election of Committee or its Officers) other than the elections of the committees of the specified

societies including its officers), Conduct of general meetings, management or business or a society shall be referred by any of the parties to the disputes, or by federal society to which the society is affiliated or by a creditor of the society, (in the Co-operative Court) If both the parties there to 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 and 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 persons who claims to be a member of the society);

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43,44 or 45 and any person claiming through such person:

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society:

(e) any other society , or the Liquidator of such a society or de-registered society or the official

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A Assignee of such a de-registered society.”

21. It can be seen from the above extract that the Section makes it mandatory that certain disputes, the nature of which is specified in the said sub-section, be referred to the ‘Co-operative Court’ – as defined under Section 2(10-a ii). Such reference is required to be made by “any of the parties to the dispute”. The Section also specifies the nature/subject matter of dispute which is required to be referred to the Co-operative Courts. They are “disputes touching” the
- C (1) Constitution of the society
 (2) Elections of the “Committee or its officers”
 (3) Conduct General Meetings
 D (4) Management of the society or
 (5) Business of the society.

22. Section 91 also stipulates that the disputes which are mandatorily required to be referred to the Co-operative Court for an adjudication must also be disputes arising between the parties to the dispute who should belong to one or the other categories specified under clauses (a) to (e) to sub-section (1), hereinafter referred to as ‘enumerated persons’, for the sake of convenience. It can be seen from the scheme of Section 91, to confer exclusive jurisdiction on the Co-operative Court, the dispute must satisfy two requirements. It was held so in *Marine Times Publications (P) Ltd. Vs. Shriram Transport & Finance Co. Ltd.*, (1991) 1 SCC 469 at para 11:

- G “11. Before a dispute can be referred to a Cooperative Court under the provisions 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

H * ‘Co-operative Court’ means a court constituted under this Act to decide disputes referred to it under any of the provisions of the Act.

essential that the parties to the said dispute must belong to any of the categories specified in clauses (a) to (e) of sub-section (1) of the said section."

Both the subject matter as well as the parties to the dispute must be those specified under the section. In other words if either of the above mentioned two requirements is not satisfied then the dispute cannot be adjudicated by the Co-operative Court. If one of the parties to the dispute is not an enumerated person, the question whether the subject matter of the dispute is one which falls exclusively within the jurisdiction of the Co-operative Court need not be examined. Similarly, if it is found in a given case that the subject matter of dispute is not covered by Section 91, an enquiry into the question whether the parties to the dispute fall under any of the categories enumerated under Section 91 would become irrelevant.

23. However, learned counsel for the respondent argued that in view of the language of Section 91(1) (c) and Section 94(3) the various classes of persons contemplated under Section 91 to bring the dispute within the jurisdiction of the Co-operative Court (if the subject matter of the dispute is otherwise exclusively amenable to the jurisdiction of the Co-operative Court), includes persons other than the members of the society though not covered by clauses (a), (b), (d) and (e) of Section 91(1). The learned counsel laid emphasis on the clause "persons other than a member of the society" occurring under Section 91(1) (c) and the clause "whether he be a member of the society or not has acquired any interest in the property of a person who is a party to a dispute" occurring under Section 94(3)(a) clearly demonstrate that the jurisdiction of the Co-operative Court is not confined only to those cases where both the parties are either members or officers etc. specified in clauses (a), (b), (d) and (e) of Section 91(1).

24. To examine the correctness of the submissions made by Shri C.A. Sundaram, it requires an analysis of Section 91(1)(c) and 94 (3). When Section 91(1)(c) stipulates that

- A persons other than the members of the society with whom the society has any transaction as one of the classes of persons who could be parties to a dispute amenable exclusively to the jurisdiction of the Co-operative Court, such a class is not an unqualified class. The said sub-section further qualifies the said
- B class by expressly mentioning that the transactions of such persons with a society should be a transactions "in respect of which restrictions and Regulations have been made or prescribed under Sections 43, 44, or 45 of the Act". Therefore, to understand the exact nature of the above mentioned class,
- C an examination of the scheme of Sections 43, 44 is necessary.

25. Section 43 (1) reads as follows:

- "43. (1) A society shall receive deposits and loans from members and other persons, only to such extent, and under such conditions, as may be prescribed, or specified by the by-laws of the society."
- E The said provision recognises the legal authority of a co-operative society to receive deposits and loans either from the members or other persons. It further stipulates that the receipt of deposits and loans is permissible only to the extent and subject to such conditions as may be prescribed.

26. Section 44 on the other hand deals with the legal authority of the co-operative society to make a loan/lend money. Section 44 in so far as it is relevant reads as follows.

- "44.(1) No society shall make a loan to any person other than a member or on the security of its own shares, or on the security of any person who is not a member.
- G Provided that with the special sanction of the Registrar, a society may make loans to another society.
- H (2) Notwithstanding anything contained in the foregoing sub-section, a society may make a loan to a depositor on

the security of his deposit. A

(3) *****

It can be seen from sub-section (1) that it prohibits a society from lending money to a person other than a member. It also prohibits lending of money by the society even to a member on the security of the shares of the same society. Further it also prohibits lending of money to a member on security to a person who is not a member. However, the proviso to sub-section (1) authorises a society to lend money to any other society with the special sanction of the Registrar. C

27. Sub-section (2) expressly authorises the society to lend money to a depositor on the security of his deposits. Such an authorisation is declared to be notwithstanding anything contained in sub-section (1). In other words, the restriction contained in sub-section (1) that a society shall not lend money to a person other than a member is relaxed with reference to a depositor, who is not a member of the society, as we have already noticed under Section 43 that the deposits or loans can be received by a society not only from its members but also from persons other than members. D

28. Section 45 makes a general declaration that the transactions of the society with persons other than its members shall be subject to such restrictions as may be prescribed. Section 45 reads as follows:- F

"45. Save as is provided in this Act, the transactions of a society with persons other than members shall be subject to such restrictions, if any, as may be prescribed."

29. Therefore, where Section 91 (1) (c) speaks of persons other than the members of the society, it is actually referring to persons other than the members of the society who have deposited money with the society or who have either lent or borrowed money from the society in accordance with the provisions of Sections 43 and 44 and subject to the conditions G

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- A and limitations if any prescribed with reference to such lending to or borrowing from the society.

30. Coming to the language and Scheme of Section 94(3). Section 94(1) enumerates the powers of the Cooperative Court such as the power of summoning the witness and documents etc. Sub-section (3)(a) reads as follows:

94. Procedure for settlement of disputes and power of Co-operative Court

- C xxx xxx xxx xxx

D (3)(a) If the Co-operative Court is satisfied that a person whether he be a member of the society or not *has acquired any interest in the property of a person who is a party to a dispute* it may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Co-operative Court shall be binding on the party so joined in the same manner as if he were an original party to the dispute."

E [emphasis supplied]

F The substance of sub-section (3)(a) is that if the Co-operative Court in the course of adjudication of a dispute is satisfied that any person other than a party to the dispute "has acquired any interest in the property of a party to a dispute", then the Co-operative Court is empowered to implead such a 3rd party as a party to the dispute. Such a 3rd party may or may not even be a member of the society. The sub-section further declares such an impleaded 3rd party to be bound by the decision of the Co-operative Court.

H 31. It is argued by Shri C.A. Sundaram, learned senior counsel for the respondents that the scheme and language of Section 94(3)(a) makes it beyond doubt that the Co-operative Court's jurisdiction to adjudicate the dispute is not confined only

to the disputes between the various classes of persons A
enumerated under Section 91 alone but extends to others also
if such a 3rd party (even in a case where he happen to be a
non-member) acquires some interest in the property of either
the society or the members or any other person enumerated
in Section 91.

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32. We find it difficult to accept the submissions of Shri Sundaram for the reason if really the Legislature intended that the Co-operative Court should have jurisdiction in all the disputes irrespective of the nature of the dispute arising between the various classes of persons enumerated in Section 91 and non-member 3rd parties who acquire any interest in the property of such enumerated persons, the Legislature could have clearly indicated the same in Section 91 itself. It must be remembered that Section 94(3)(a) does not enable a person other than an enumerated person to refer a dispute to the Co-operative Court. The said legal position is made clear in *Marine Times* (supra). It was a case where a member of a housing society occupying a part of the building owned by the society agreed to sell that property to a 3rd party subject to the approval of the society. The society declined approval. The 3rd party raised a dispute against the society as well as the member before the Co-operative Court. Dealing with the question whether the Co-operative Court would have jurisdiction to adjudicate the dispute, this Court answered the question in the negative.

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33. Accepting the submission of Shri Sundaram would lead to a situation that while on one hand it is the settled position of law that the Act does not permit a person other than the one enumerated under Section 91 to seek adjudication of his dispute with 'enumerated persons' in a Co-operative Court, such a Court would be authorised by virtue of Section 94(3)(a) to adjudicate a dispute between an enumerated person and a non-member 3rd party, if raised by an enumerated person. On the other hand, from the language of the said sub-section, it appears that the only circumstance which enables the Co-

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- A operative Court to exercise its jurisdiction against such a 3rd party is that while adjudicating a dispute which is otherwise amenable to its jurisdiction, the Co-operative Court reaches the conclusion that a 3rd party acquired some interest in the property of one of the parties to the dispute. Necessarily the
- B following two questions must be examined to understand the exact scope of the said sub-section. (1) Whether the property referred to in the sub-section is any property of one of the parties to the dispute or should such property bear any relationship to the dispute? (2) Whether the acquisition of the
- C interest referred to should be anterior to the reference of the dispute to the Co-operative Court or on acquisition made during the pendency of the litigation?

34. The answer to the first question to our mind is plain. The property in which the 3rd party acquired interest must bear some relationship with the dispute pending before the tribunal. To hold otherwise would be to enable the Co-operative Court to examine questions unconnected with the dispute pending before it and wholly unconnected with the affairs of the Society. An illogical result to be normally avoided unless compelled by
- E the express language of the Act.

35. Coming to the second question, learned counsel for the appellant argued that the intention of the Legislature is to be gathered from the language of the sub-section (3)(a) and the employment of the present perfect tense (has acquired any interest) must only lead to a conclusion that the Legislature intended the Co-operative Court to deal with only the cases of acquisition of interest in the property during the pendency of the litigation before it. On the other hand, Shri Sundaram argued that there is no warrant for such an inference in the language of sub-section (3)(a).
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36. We are of the opinion that having regard to the language of Section 94, sub-section (3)(a), more specifically "has acquired any interest", the acquisition of the interest contemplated is only an acquisition made during the pendency
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of the dispute before the Co-operative Court. For the reason A
that such an acquisition of interest is qualified by the words,
"in the property of a person who is a party to the dispute", we
hold so for another reason also.

37. To hold otherwise, would lead to a situation where a B
dispute between an enumerated person and a 3rd party would
become amenable to the jurisdiction of the Co-operative Court
at the instance of the persons enumerated under Section 91
but not at the instance of a 3rd party in view of the judgment of
this Court in (1991) 1 SCC 469. An absurd situation, *ex facie*
violative of Article 14, in as much as such a construction would
lead to a situation that with reference to a dispute, the affected
parties are compelled to approach different fora for the
adjudication of the same dispute depending upon the fact
which party is seeking a relief. Such a construction, being
inconsistent with a constitutional mandate, is impermissible. C

38. For coming to the conclusion that the suits in question D
are not maintainable and the dispute could be examined
exclusively by the Co-operative Court, the High Court
proceeded on the basis that it is possible to challenge the
resolution and the conveyance independently. Starting from such
a premise, the High Court opined that challenge alone to the
resolution without challenging the conveyance is possible but
not vice-versa. The reason given by the High Court for the same
is as follows:- E

"If Court passes a decree or order setting aside the G
resolution of the general body, the validity of the
conveyance will not be intact, but if a decree or order is
made merely setting aside the conveyance, the resolution
of the General body will remain intact. By the conveyance
land owned by the Society is transferred. The society is a
body corporate. The person or persons who have signed
the conveyance on behalf of the Society derive the
authority to do so from resolution of the General Body. If
the resolution is set aside or is declared invalid the act of H

- A the person of executing the conveyance would become unauthorised. Such an order in relation to the validity of the General Body resolution will impair the validity of the conveyance. Consequently, if the resolution remains intact but the conveyance is set aside for some reason the
- B Society may be in a position to execute another conveyance pursuant to the resolution of the general body."

We do not propose to examine the correctness of the legal premise that the general body resolution and the conveyance could be segregated in a dispute such as one on the hand. For

- C the sake of argument, we presume that it is possible for the plaintiffs, appellants herein, to challenge only the general body resolution. We also presume that the conclusion arrived at by the High Court that if the general body resolution is set aside, the same will impair the validity of the conveyance even without
- D an appropriate declaration by a competent judicial body. (We emphasise that we only presume so without examining to the said conclusion for the limited purpose) If the resolution dated 6th December, 2009 alone is challenged before the Co-operative Court, in view of our conclusion recorded earlier, the
- E respondents 22 and 23 (the beneficiaries of the resolution) could not be made parties before the Co-operative Court. In such a situation, even if the Co-operative Court came to the conclusion that the resolution is illegal, it would always be open for the respondents 22 and 23 to ignore such a determination
- F as they are not parties to the proceedings and assert their title on the basis of the conveyance dated 7th December, 2009. If any party such as the plaintiffs (the appellants herein) disputes the validity of the title conveyed thereunder, necessarily such a dispute would have to be adjudicated by a competent Court
- G under Section 9 of the Code of Civil Procedure wherein, necessarily, the question whether a valid title was conveyed in favour of respondents 22 and 23 by the society would arise for determination. The legality of the resolution would still have to be gone into again. Therefore, in our opinion, the premise in
- H which the High Court commenced its enquiry itself is wrong.

39. For all the above-mentioned reasons, we are of the opinion that the conclusion of the High Court that the suits in question are not maintainable on the ground that the dispute is amenable to the exclusive jurisdiction under Section 91 of the Act to the Co-operative Court cannot be sustained and the same is required to be set aside. A

40. That takes us to the next question raised in these appeals - whether the High Court was right in going into the maintainability of the suits in question. Shri Venugopal, learned senior counsel appearing for some of the respondents submitted that in view of the provisions contained in Section 9A of the Code, which was introduced by local amendment of the Maharashtra Legislature to the Code by Maharashtra Act No.65 of 1977, the course of action followed by the High Court is not only justified but also the Court is obliged to follow such a course of action. Section 9A reads as follows: B

"9A. Whereof the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- C

(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit. D

(2) Notwithstanding anything contained in sub-section (1), E

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- A at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."
- B The language of Section 9A is self-explanatory. We accept the submission made by Shri Venugopal in toto.

41. Coming to the question of the interim order in view of our conclusion that the suits in question are maintainable and having regard to the fact that the suits are to be tried by the
- C High Court in exercise of its original jurisdiction, we do not propose to pass any interim order and leave it open to the High Court to consider the applications filed by the plaintiffs for interim orders in accordance with law and pass appropriate orders. The principles governing the grant of interim orders are
 - D too well settled and we need not expound the same once again. However, we would like to indicate that on the question of the existence of a *prima facie* case in favour of the plaintiffs, the following factors are germane and require to be examined. Having regard to the content of the plaint, we are of the opinion
 - E that the nature of the legal right, the plaintiffs claim for seeking the relief such as the one sought in the suits necessarily depends upon the byelaws of the Society, the rights and obligations of the various classes of its members with respect to the property in dispute. The High Court may examine the above aspects before passing an appropriate interim order.
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42. In view of the above, we also deem it proper to direct all the parties to maintain status quo as on today for a period of two weeks to enable the Bombay High Court to examine the applications of the plaintiffs for interim orders and pass
- G appropriate orders in accordance with law.

43. The appeals are, accordingly, disposed of.

N.J.

Appeals disposed of.

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