

MARGRET ALMEIDA & ORS., ETC. ETC.

v.

BOMBAY CATHOLIC COOP. HOUSING SOCIETY LTD. &
ORS.

I.A. Nos. 4-6 of 2012

IN

Civil Appeal Nos.1175-1177 of 2012

FEBRUARY 24, 2012

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

Maharashtra Co-operative Societies Act, 1960 – s.91 – Trial court passing interim order of status quo during the pendency of the suits in favor of the appellants holding that the suits are maintainable – Division Bench of High Court held that the suits were not maintainable – On appeal, the Supreme Court held that the suits are maintainable and directed the parties to maintain status quo to enable the High Court to examine the applications for interim orders – Interlocutory applications seeking clarification of the order of the Supreme Court – Order modified to the effect that the matter be considered by the Division Bench of the High Court and decide whether the interim order granted by the trial judge is sustainable.

Appellants-plaintiffs filed two suits. The trial judge held that the suits were maintainable, as also granted interim order in favour of the appellants, directing the parties to the suits to maintain *status quo* during the pendency of the suits. The Division Bench of the High Court held that the suits were not maintainable in view of Section 91 of the Maharashtra Cooperative-Societies Act, 1960 and dismissed the suits. Thereafter, appeals were filed before the Supreme Court. By order dated 30.01.2012, the Supreme Court holding that the suits were maintainable, set aside the order passed by the

A Division Bench and directed the parties to maintain status quo to enable the High Court to examine the applications of the appellants for interim orders. Therefore, the instant interlocutory applications were filed seeking clarification of the order dated 30.1.2012.

B The appellants contended that the judgment of the Supreme Court wrongly recorded that the application of the plaintiffs-appellants for interim orders is required to be considered, whereas, as a matter of fact, the appellants were granted interim order by the trial judge and it was
C the respondents, who challenged the grant of such an interim order and, therefore, the judgment of Supreme Court, is required to be clarified.

Allowing the interlocutory applications, the Court

D HELD: The submissions of the appellants are accepted. The erroneous conclusion of the Division Bench of the High Court cannot operate to the prejudice of the appellants-plaintiffs, who successfully demonstrated before Supreme Court that the order of the
E Division Bench cannot be sustained. The settled principle of law is that the *actus curiae neminem gravabit* - 'act of the court shall not harm anybody'. Therefore, the matter should be considered by the Division Bench of the High Court and decide whether the interim order granted by
F the trial judge is sustainable. The judgment of Supreme Court dated 30.1.2012 stands modified. [Paras 7 and 8] [400-B-C; G-H]

G *South Eastern Coal Fields Limited vs. State of M.P.* (2003) 8 SCC 648 : 2003 (4) Suppl. SCR 651 – referred to.

Case Law Reference:

2003 (4) Suppl. SCR 651 Referred to Para 7

CIVIL APPELLATE JURISDICTION : I.A. Nos. 4-6 of 2012.

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MARGRET ALMEIDA & ORS., ETC. v. BOMBAY CATHOLIC 397
COOP. HOUSING SOCIETY LTD.

IN

Civil Appeal Nos. 1175-1777 of 2012.

From the Judgment & Order dated 29.08.2011 of the High Court of Judicature at Bombay in Appeal No. 413 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010, Appeal No. 489 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010 and Appeal No. 573 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010.

Mukul Rohtagi, Shally Bhasin Maheshwari for the Appellants.

C.A. Sundaram, Shyam Divan, Pratap Venugopal, Namrata Sood, Anuj Sarma, Gaurav Nair (for K.J. John & Co.) E.C. Agrawala, C.D. Mehta, Pritha Srikumar, Nikhil Nayyar, Garima Prashad, P.S. Sudheer, Rishi Maheshwari for the Respondents.

The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. This is an Application filed with the prayer as follows:

'In the above facts and circumstances, the Applicants / Appellants most respectfully pray that the Hon'ble Court may be pleased to:

(a) Clarify the order dated 30.01.2012 passed by this Hon'ble Court in Civil appeal No.1175-1177 of 2012 titled as "Margret Almeida & Ors. Etc. Etc Versus The Bombay Catholic Co-operative Housing Society Ltd. & Ors. Etc. etc." as sought in Para 6; and / or

(b) Pass such other further or other reliefs as the Applicants / Appellants may be found to be entitled under the facts and circumstances stated hereinabove."

2. By the Judgment dated 30-01-2012 C.A.Nos.1175 – 1177 of 2012 were disposed of setting aside the Judgment dated 29-08-2011 of a Division Bench of the Bombay High

A Court. The said Judgment was rendered in a batch of
 connected matters, arising out of two suits No.144 & 145 of
 2010, on the original side of the Bombay High Court. The
 question before the Division Bench was whether the two suits
 were maintainable in view of Section 91 of the Maharashtra
 B Cooperative Societies Act, 1960. It appears from the Division
 Bench Judgment of the High Court that the learned Trial Judge
 not only held that the suits are maintainable, but also, granted
 interim order in favour of the plaintiffs (appellants/ petitioners
 herein), directing the parties to the suits to maintain status quo
 C during the pendency of the suits.

3. In view of the conclusion of the Division Bench that the
 suits were not maintainable, the Division Bench recorded an
 order of dismissal of the suits.

D 4. While allowing the appeals, this Court directed, at paras
 41 and 42 of the Judgment, as follows:

E "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 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 too well settled and we need
 F 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 that the
 nature of the legal right, the plaintiffs claim for seeking the
 G 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
 H appropriate interim order.

42. In view of the above, we also deem it proper to direct A
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 appropriate orders in accordance with law."

(Emphasis supplied) B

And hence, the present Application.

5. The learned senior counsel for the Applicants Mr. Mukul C
Rohtagi, argued that the appellants (plaintiffs) had an interim
order of *status quo* in their favour granted by the learned Trial
Judge while holding that the suits are maintainable and rejected
the objection to the contra by the defendants. Aggrieved by the
decision of the learned Trial Judge, the defendants carried the
matter in appeal before the Division Bench of the Bombay High
Court. Appeals were allowed by the Division Bench, on an
erroneous appreciation of the legal position regarding the
maintainability of the suits. In view of the Judgement of this
Court dated 30-01-2012, it is for the Division Bench of the
Bombay High Court, to consider whether the interim order
granted by the learned single Judge, to maintain status quo
during the pendency of the suit, is to be sustained or not. The
above extracted portion of the Judgement of this Court wrongly
recorded that the application of the plaintiffs (appellants herein)
for interim orders is required to be considered, whereas, as a
matter of fact, the appellants herein were granted interim order
by the learned Trial Judge and it is the respondents herein, who
are challenging the grant of such an interim order and, therefore,
the Judgment of this Court dated 30-01-2012, is required to
be clarified accordingly. E F

6. On the other hand, the learned senior counsel Mr. C.A. G
Sundaram, appearing for respondent, argued that in view of the
fact that the appeals preferred by the respondents before the
Division Bench of the Bombay High Court were allowed
dismissing the suits, the interim order granted during the
pendency of the suits, by the learned single Judge of the
Bombay High Court, lapsed with the dismissal of the suits and, H

A therefore, this Court, rightly, opined that the application of the plaintiffs for interim orders is required to be considered afresh.

7. We agree with the submission made by the learned senior counsel Mr. Mukul Rohtagi. The erroneous conclusion of the Division Bench cannot operate to the prejudice of the plaintiffs, who successfully demonstrated before this Court that the order of the Division Bench cannot be sustained. The settled principle of law is that the actus curiae neminem gravabit - 'act of the court shall not harm anybody'. In *South Eastern Coal Fields Limited Vs State of M.P.*, (2003) 8 SCC 648, this Court held:

“27. That no one shall suffer for an act of the court is not a rule confined to an erroneous act of the court; the act of the court embraces within its sweep all such acts as to which the court may form an opinion in any legal proceeding that the court would not have so acted had it been correctly appraised of the facts and the law. *The factor attracting applicability of the restitution is not the act of the court being wrongful or mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable has resulted in one party gaining an advantage which it would not have otherwise earned; or the other party has suffered a impoverishment which it would not have suffered but for the order of the court and the act of such party.*”

(Emphasis supplied)

Therefore, we are of the opinion that the matter should be considered by the Division Bench of the Bombay High Court and decide whether the interim order granted by the learned Trial Judge is sustainable.

8. The application is accordingly allowed and the Judgement of this Court dated 30-01-2012 stands modified, as indicated above.

H N.J. Interlocutory applications allowed