

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 13 of 2024

Present

Mr. Justice Muhammad Jaffer Raza

Hamdam Cooperative Housing Society Ltd. Appellant.

Versus

Assistant Registrar Cooperative Society-VI & others Respondents.

Mr. Hassan Khurshid Hashmi, Advocate for the Appellant a/w
M/s. Ahmed Shahmir and Hizbullah A. Khaskheli Advocates.
Mr. Nadir Khan Burdi, Advocate for the Respondent No.5 a/w
M/s. Shaukat Muhammad Ali Khimani, Muhammad Zafar, Tarique
Jamali and Zeeshan Asad.
Mr. Ahmed Khan Khaskheli, A.A.G.

Dates of hearing: 21.05.2025, 26.06.2025, 11.08.2025, 22.09.2025 &
17.10.2025.

Date of announcement: 14.11.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant Miscellaneous Appeal has been filed impugning order dated 20.12.2023 (**“Impugned Order”**) passed in Civil Suit No.473/2023, pending before the Vth Senior Civil Judge Karachi, West (**“Court”**). The noted order was passed on an application preferred by the Appellant for rejection of plaint under Order VII Rule 11 CPC, which was dismissed vide Impugned Order.

2. The application under the noted provision was preferred by the Appellant seeking rejection of the plaint on the grounds that Respondent No.5 has failed to comply with the provision of Section 115 of the Cooperative Societies Act, 2020 (**“Act of 2020”**). He has further contended that the mechanism provided in the noted provision has not been complied with as the noted Respondent did

not dispatch a “mandatory” notice within the time period specified in the section. He has further contended that the notice failed to comply with the notice period and was sent to the Deputy Registrar, which according to the learned counsel is impermissible under the scheme of the Act of 2020. In light of the same he has prayed for rejection of the plaint and has relied upon several reported judgments¹.

3. Conversely, learned counsel for Respondent No.5 has argued that the required notice under Section 115 of the Act of 2020 was sent to both the Registrar and Deputy Registrar under the provision of the Act of 2020. However, he has argued that given the exigencies involved in the case the noted Respondent did not have the luxury of time to comply with the notice period prior to institution of the Suit. In that regard he has stated that elections of the Appellant Society were to commence only a few days after the noted Suit was filed. To further substantiate his contention, he has invited my attention to paragraph No.18 of the plaint wherein he has disclosed his date of knowledge in reference to the elections of the Appellant. He has further contended that the suit involves mixed questions of law and fact which cannot be decided without framing of issues and recording of evidence and the application u/o VII Rule 11 CPC was correctly dismissed by the learned Trial Court.

¹ Pakistan Railways versus Karachi Development Authority reported at **PLD 1992 Karachi 71**.
 Sualeh Sons (Private) Limited versus. Karachi Development Authority reported at **1997 CLC 893**.
 Khalid & Amp company versus Cantonment Board, Malir reported at **PLD 2002 Karachi 502**.
 Ghulam Hassan versus Jamshaid Ali And Others reported at **2001 SCMR 1001**.
 Collector, Sahiwal And 2 Others versus Mohammad Akhtar reported at **1971 SCMR 681**.
 P.E.C.H., Society Limited versus Habib-Ur-Razzaq And 2 Others reported at **2021 CLC 2011**.
 Muhammad Akram Javaid versus Bashir Ahmad Shauk And Another reported at **2016 CLC 1751**.
 Dhunjishah b. Ghadialy versus Karachi parsi cooperative housing Society ltd. And Others reported at **2004 CLC 587**.
 Mst. Atia khanum versus Messrs saadabad cooperative housing society Ltd. And others reported at **2002 MLD 209**.
 M. Wahidullah Ansari versus Zubeda sharif and another reported at **1999 YLR 1127**.
 Metro Cooperative Housing Society Limited versus bonanza garments Industries (PVT.) Limited And 3 Others reported at **1996 MLD 593**.
 Darul Aman Cooperative Housing Society Limited, Karachi versus the Secretary, government of Pakistan, ministry of works and Rehabilitation Division, And 3 Others reported at **1995 MLD 1553**.
 Ziaurrehman Alvi versus Messers Allahabad cooperative housing Society limited and 2 others reported at **PLD 1995 KARACHI 399**.
 Farida versus Prince Apartments Cooperative Housing Society And 2 Other reported at **1984 CLC 2914**.
 Muhammad Ali Memorial Cooperative Housing Society Ltd., Karachi versus Syed Sibtey Hasan Kazmi reported at **PLD 1975 KARACHI 428**.
 Mrs. Parveen Akhtar versus Lucknow Cooperative Housing Society Ltd. reported at **2014 YLR 1539**.

4. Learned A.A.G., whilst rendering valuable assistance in the matter, has opined that the notice under Section 115 is mandatory. However, the noted period, according to learned counsel, is directory. He has argued that failure to read the provision in the same manner will defeat the intent of the legislation. To advance his contention he has relied upon the judgment in the case of Defence Housing Authority Lahore².

5. I have heard all the learned counsels and perused the record with their able assistance. Prior to delineating the arguments advanced by the learned counsels, it will be expedient to first examine the relevant provisions of law. In that respect Section 115 of the Act of 2020 is reproduced below:

"115. 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' notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, 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".

6. To understand the noted provision, the interplay between the above noted and reproduced provision and Section 70 of the Cooperative Societies Act, 1925 (**'Act of 1925'**) is necessary. The same is reproduced as under: -

"70. 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".

7. It is apparent that both the noted provisions are identical in nature and therefore the learned counsel for the Appellant has placed reliance on reported judgments, as mentioned earlier, stemming from the earlier legislation i.e. Section 70 of the Act of 1925. The present adjudication will decipher whether the two noted provisions can be read differently or synonymously despite being identical in their wording. The wisdom and scheme of Section 70 of the Act of 1925 was

² Defence Housing Authority Lahore versus Messrs Builders And Developers (Pvt.) Ltd. and another reported at **2015 SCMR 1799**.

elaborated upon extensively by the Hon’ble Supreme Court in the case of Defence Housing Authority Lahore wherein it was held as under: -

“10. The above provision provides for resolution of dispute 'touching business of a society' by the Registrar by himself or through arbitration if the parties so desire. The nature of disputes covered by section 54 of the Act of 1925 has been specified in Clauses (a) to (e). They all relate to disputes regarding internal affairs of a Society in between its members or of members with the society or its committees. Both sections 54 and 70 of the Act of 1925 are limited to disputes regarding 'business of the society'. As the phrase appears in different provisions of the same statute as a rule it is to be assigned the same meaning. Though section 70 does not make reference to section 54 of the Act of 1925 but without relating it to the latter the issuance of notice would be meaningless. The two months wait period provided under section 70 is to enable the Registrar to resolve the dispute. The only provision in the Act of 1925 empowering the Registrar to resolve disputes is section 54. Restricting the provision of section 70 to only those disputes covered by section 54 is consistent with the scheme of the Act of 1925, providing for regulating registration, working and business of the cooperative societies. The Registrar has been conferred a pivotal role in implementing the obligations cast upon the Society and its members including hearing complaints and implementing his decisions. Section 70 of the Act of 1925 does not apply to all suits instituted against the Society or any of its officers. It is restricted to suits in respect of any act 'touching the business of the society'. If, as held in some of the judgments of the High Court and canvassed by the learned counsel for the appellant, the 'business of the society' should be given an expanded meaning so as to include any business dealing by an outsider with the Society is accepted, then perhaps barely any suit filed against the society would be excluded from the application of section 70 of the Act of 1925. The only reasonable construction consistent with the scheme and purpose of the Cooperative Societies Act would be to limit the application of section 70 to matters falling under section 54 of the Act.

8. It is evident from the perusal of the noted judgment that the Hon’ble Supreme Court has restricted the application of Section 70 to matters falling within Section 54³ of the Act of 1925. Section 54 of the Act of 1925 was the section in which disputes were referred to the Registrar of Societies for the purposes of arbitration. Therefore, Section 70 of the noted Act was read in the

³ 54. [If any dispute touching the business of a society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises---

(a) between members or past members of the society or persons claiming through a member or past member, or

(b) between members or past members or persons so claiming and any past or present officer, agent or servant of the society, or

(c) between the society or its committee, and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is or is not a member of the society, [or].

[(e) between a financing bank authorised under sub-section (I) of section 34 and a person who is not a member of a society.] it shall be referred to the 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.]

same context. The Act of 2020 contains no provision analogous to Section 54 of the Act of 1925⁴. In such circumstances I agree with the deduction of the learned Trial Court in holding that in the absence of any corresponding provision to Section 115 the noted section cannot be read as mandatory. The entire purpose and wisdom, as expounded by the Hon'ble Supreme Court, in promulgating Section 70 in the Act of 1925, was to give the contesting parties an opportunity to arbitrate. The wisdom and purpose was lost after the enactment of the Act of 2020 and therefore Section 115 has to be read and understood accordingly. Therefore, the judgements relied upon by the learned counsel for the Appellant stemming from Section 70 of the Act of 1925 would no longer be relevant⁵.

9. Even otherwise perusal of record reveals that Respondent No.5 issued notice under Section 115 of the Act of 2020 on 03.03.2023 and the suit was instituted on 04.03.2023. It is apparent from the record that the elections under challenge, were being conducted on 05.03.2023 and there was serious apprehension was expressed in the plaint that the Appellant may part with possession or create third party interest into Subject Plot. I have refrained myself from making any observation in reference to the Suit as the same is still sub-judice before the Trial Court and shall be adjudicated on its own merits, without being influenced by any finding in the instant judgement.

10. In light of what has been held above I see no reason to interfere with the otherwise well-reasoned order passed by the learned Trial Court. Consequently, the instant appeal is dismissed with no order as to costs.

J U D G E

Nadeem Qureshi "PA"

⁴ The same has been noted and appreciated by the Hon'ble Supreme Court in the case of Muhammad Dawood versus Mst. Sakeena Farooque @ Aziza and others in **C.P.L.A 479-K of 2023**.

⁵ Similar view was expressed, albeit in different circumstances, by Mohammad Abdur Rahman J. in order dated 14.12.2024 in **Civil Suit No.1802 of 2018**.