

M/s. Sabharwal Brothers and Another

Vs

Smt. Guna Amrit Thandani of Bombay

Civil Appeal No. 1574(N) of 1971

(G. K. Mitter, A. N. Grover JJ)

29.03.1972

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from a judgment and order of the Bombay High Court in a Special Civil Application from a decision of the Court of Small Causes, Bombay in exercise of its revisionary jurisdiction. The revisional court had reversed the decision of the Trial Court and remanded the matter for disposal of the issues other than issues 2 to 8 tried as preliminary issues and decided in favour of the plaintiffs before the Court of Small Causes.

2. The facts are as follows. Respondent No. 1 was the owner of a flat on the second floor of Block No. 8 'Shyam Niwas', Warden Road, Bombay. She was a member of a Co-operative Housing Society and had acquired the flat from the said society. In 1959, she had put the appellant Sabharwal Brothers in possession of the flat for a period of 11 months on payment of Rs. 510/- per month. There was an agreement in writing which purported to show that the possession was to be on leave and licence basis. This agreement was signed by a partner of Sabharwal Brothers who also became members of the said Co-operative Society. There were repeated renewals of the said agreement until October 25, 1962, when the first respondent asked the appellants to vacate possession on the ground that she required the flat for her personal occupation. As this was not complied with, she filed a statement of claim before the Registrar of Co-operative Societies on the ground that there was a dispute within the meaning of Section 91(1) of the Maharashtra Co-operative Societies Act (hereinafter referred to as the 'Act') which required adjudication. There was a challenge to the jurisdiction of the nominee of the Registrar to whom it was referred by the appellants. The proceedings before the nominee went on for some time and on July 3, 1964, the nominee made an award to the effect that the appellants were occupying the flat on leave and licence basis. Anticipating the award the appellants filed a suit in the Court of Small Causes, Bombay stating that they were in occupation of the flat as tenants and as such entitled to protection under the Bombay Rent Act, 1947 and the first respondent had no right to evict them. In her written statement the defendant denied that the plaintiffs were tenants contending, inter alia, that the plaintiffs were occupying the flat only on leave and licence basis, etc., that the dispute between the parties had been referred to the Registrar of Co-operative Societies for disposal and finally that the Court of Small Causes had no jurisdiction to entertain and the try a suit involving such a dispute. The Small Causes Court framed no less than twelve issues of which issues 2 to 8 related to the maintainability of the suit and the jurisdiction of the court in view of the provisions of Sections 91(1)(d) of the Act. The Small Causes Court held that the suit was maintainable and answered the other preliminary issues in favour of the plaintiff. The matter was taken in revision to a Bench of the said Small Causes Court. The Bench took a different view holding that the Registrar's nominee did have jurisdiction to try the

dispute between the parties remanded the proceedings to the Trial Court for disposal of the suit after deciding an issue as to res judicata by reason of the award of the nominee.

3. The High Court dismissed the Special Civil Application of the plaintiffs holding that the revisional court of the small Causes was justified in coming to the conclusion that it was not open to the plaintiffs to contend that the Registrar or his nominee had no jurisdiction to entertain the dispute on the two grounds on which it was challenged.

4. Before us the main points urged on behalf of the appellants were : first, whether there was any dispute between the parties touching the business of the Co-operative Society which could be decided by the Registrar or referred by him to a nominee for disposal; and, secondly, whether the suit filed in the Small Causes Court was maintainable having regard to the nature of the relief sought.

5. The central question, therefore, is, whether the dispute between the parties is capable of reference under the Act. The relevant portion of Section 91(1)(b) of the Act runs as follows :

"(1) Notwithstanding anything contained in any other law for the time being in force, any disputed touching the constitution,..... management or business of a society shall be referred by any of the parties to the dispute..... if both the parties thereto are one or other of the following -

#(a) * * * *##

(b) a member, past member or a person claiming through a member, etc."

Section 91(3) provides :

"Save as otherwise provided under sub-section (3) of 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).

* * * *."##

We may also note that relevant portion of Section 163(1) which provides :

"(1) Save as expressly provided in this Act, no civil or revenue court shall have any jurisdiction in respect of -

#(a) * * * *##

(b) any dispute required to be referred to the Registrar, or his nominee,.....

#(c) * * * *."##

6. Before the Court of Small Causes reference was made to bye-law No. 2 of the Society to show that the objects of the society were inter alia to carry on the trade of buying, selling, hiring and letting land in accordance with the co-operative principles and under Regulation No. 5 in Form 'A' printed at the end of the bye-laws :

"No tenant shall assign, underlet, vacate or part with the possession of the tenement or any part thereof without the consent in writing of the society."

7. The Bench of the Court of Small Causes referred to the above provisions and observed that the bye-laws of the society constituted an agreement between the members of the society and a breach thereof would affect the defaulting member's right of membership of the society and consequently a dispute relating to the letting of the flat was a dispute which touched the business of the society.

8. The High Court referred to Section 91 of the Co-operative Societies Act and Section 28 of the Bombay Rent Act and observed :

"There is a competition between two authorities, a court and the Registrar's nominee, both exercising exclusive jurisdiction in respect of matters coming within their jurisdiction,"

and concluded that on general principles of law it would not be proper to allow the same question to be agitated again under different guise. It also observed that the decision taken by the Assistant Registrar and the nominee could have been decided by an appeal and as no appeal had been filed the provisions of law must have their effect with the result that the decision of the dispute by the nominee of the Registrar had become final.

9. With all respect to the High Court, it seems to us that there was a fundamental error in the above approach. No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-law and a breach of the bye-law could affect the defaulting member's right to membership. But we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with co-operative principles. The letting of flat by Respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the society in the matter of its letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the Respondent No. 1. The position might have been different if the later had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the Respondent No. 1 and the business of the society when the society was not itself the landlord of the flat.

10. Reference was made at the Bar to *Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain and Others.* ([1969] 1 SCR 887 : AIR 1969 SC 1320 : (1970) 40 Comp. Cas 187). The facts there were very different from those of the instant case. But the court had to consider the question of competing jurisdiction under the Bombay Rent Act and the Act and it is pertinent to note the observations at p. 902 "that the two Acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply".

11. In the result we allow the appeal, set aside the judgment and order of the High Court and of the Bench of the Court of Small Causes. The matter is now to go back to the Court of Small Causes for disposal according to law. The appellants will have the costs incurred in this Court.

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