

I.R. Hingorani

Vs

Pravinchandra Kantilal Shah and Others

Civil Appeal No. 747 of 1967

(K. S. Hegde, A. N. Grover, D. G. Palekar JJ)

04.05.1972

JUDGMENT

HEDGE, J. -

1. This is an appeal by certificate. Respondent No. 1 is the owner of Flat No. 20-B on the 5th floor of the building by name "Shalimar" situate at Marine Drive, Bombay. On April 24, 1959 he entered into an agreement called "Leave and Licence agreement" with the appellant under which he was permitted to occupy that flat at a monthly "compensation" of Rs. 250/-. On May 5, 1959, the appellant occupied the flat in pursuance of that agreement. In 1962 a co-operative society by name "New Shalimar Co-operative Housing Society Ltd." was formed. Thereafter respondent No. 1 became a member of that society. To be exact he became a member of that society on January 26, 1962. On March 28, 1963 the appellant filed an application under Section 11 of the Bombay Rent Act before the Small Causes Court, Bombay for fixing the standard rent of the flat occupied by him. Respondent No. 1 filed his objections to the suit on August 5, 1963. In his objections statement he pleaded inter alia : (1) that there was no relationship of landlord and tenant between him and the appellant and (2) civil courts had not jurisdiction to go into the dispute between the appellant and the respondent. During the pendency of that suit respondent No. 1 moved the Registrar of the Co-operative Societies for referring the dispute between him and the appellant to arbitration. The Registrar entertained that application and appointed one of his subordinates as his nominee. The Registrar's nominee summoned the appellant to appear before him on July 28, 1963. On July 28, 1963 the appellant appeared before him and contended that he had no jurisdiction to entertain the dispute. The Registrar's nominee overruled that objection. Thereafter the appellant went up in appeal to the Assistant Registrar. The Assistant Registrar dismissed his appeal. Aggrieved by that decision the appellant went up to the High Court of Maharashtra under Article 226 of the Constitution. The High Court dismissed his petition. It came to the conclusion that the dispute in question fell within the scope of Section 19(1) of the Maharashtra Co-operative Societies Act, 1960, which will be hereinafter referred to as "the Act".

2. Section 91(1) to the extent material for our purpose reads thus :

"91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, 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 Registrar, 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, past member or a deceased member of the society, or a society which is a member of the society or a person who claims to be a member of the society."

3. In the case before us when the agreement was entered into between the appellant and respondent No. 1, as seen earlier, respondent No. 1 was not a member of the society. In fact the New Shalimar Co-operative Housing Society Ltd. was not even in existence on that date. That being the case we have to consider whether the present dispute can be said to fall within the scope of Section 91 of the Act.

4. We feel it unnecessary to go into the scope of Section 91 in this case as, in our opinion, the point for decision in this case is fully covered by the decision of this Court in Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain and Others ((1969) 1 SCR 887 : AIR 1969 SC 1320.). In that case a member of the society had leased a flat belonging to him to another person. The landlord applied to the Registrar for evicting the tenant. The question for consideration therein was whether that dispute fell within the scope of Section 91 of the Act. This Court came to the conclusion that it did not fall within the scope of that section. Therein this Court ruled that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. This Court further laid down that when the original owner executed the lease he was not acting as a member but as a mortgagor in possession. Hence the case did not fall within Section 91(1)(b) of the Act. The ratio of that case fully applies to the present case.

5. For the reasons mentioned above the appeal is allowed with costs.

</html