

Hindustan Thompson Associates Ltd.

Vs

Mrs. Maya Inderson Israni and Others

Civil Appeal No. 567 of 1987

(A. P. Sen, B. C. Ray JJ)

19.09.1988

JUDGMENT

B. C. RAY, J.-

1. A member of Society Mrs. Maya Inderson Israni who has been allotted flat No. 62 on 6th floor of Nibhana Building by Disputant 2, the Nibhana Co-operative Housing Society Ltd. filed a dispute before the Judge Fifth Co-operative Court at Bombay for recovery of possession of the said flat from the opponents who are the appellants in this appeal and for mesne profits in respect of the flat alleging inter alia that the appellants were inducted in the flat without the written consent of the Society as a licensee on the basis of a leave and licence agreement which was renewed from time to time till some time in 1972 and on October 1, 1972, the member, that is, respondent 1 terminated the licence and called upon the appellant to remove itself from the said flat. Thereafter an advocate's letter dated October 1, 1972 was sent by respondent 1 to the appellant for vacating the flat. The appellant having failed to comply with the request a dispute was filed by the member as well as the Co-operative Society for eviction of the appellants from the flat, as well as for mesne profits. The plea of the appellants was that they were continuing in possession of the flat on the basis of a leave and licence agreement by payment of licence fee upto now and as such the dispute does not come within Section 91 of the Co-operative Societies Act as they have become tenants under Section 15-A of Bombay Rent Act. The Co-operative Court after hearing the parties made an award holding that the dispute fell within the jurisdiction of the Co-operative Court as the appellant claimed to be in possession of the flat as a licensee through the member of the Society which is a Co-partnership Housing Society under the Maharashtra Co-operative Societies Act. It was also held that the appellant was occupying the flats in question as a trespasser after the licence in favour of appellant was terminated. There was no subsisting licence to occupy the flat by the appellants on February 1, 1973 and so Section 15-A of the Bombay Rent Act was not applicable to it. An appeal was filed by the appellant before the appellate authority. The said appeal was dismissed and the order of the Co-operative Court was upheld. The appellants filed a Writ Petition No. 124 of 1987 before the High Court of Bombay under Article 227 of the Constitution. The said writ petition was dismissed by the High Court. Hence this appeal by special leave has been filed by the appellant.

2. In view of our judgment in *M/s A. V. R. & Co. v. Fairfield Co-operative Housing Society*, this appeal is dismissed without any order as to costs. The decree will not be executed for a period of four months from the date of this order subject to the appellant's filing an usual undertaking within a period of two weeks from today to the effect that the appellant will not transfer, assign or encumber the flat in question in any manner whatsoever and on undertaking that he will hand over peaceful possession of the flat in question to the respondent on or before the expiry of the aforesaid period and he will go on paying the occupation charges equivalent to the amount he had been paying for

each month by the 7th of succeeding month. In default of compliance of any of these terms, the decree shall become executable forthwith.

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