

Ratnakar Gajanan Godambe

Vs

Ratnaprabha Co-operative Society Ltd. and others

Civil Appeal No. 1168 of 1991 (arising out of Spl. Leave Petn. (Civil) No. 1392 of 1991)

07.03.1991

(T.K. Thommen, R.M. Sahai JJ)

JUDGMENT

1. Leave granted.

2. We have heard counsel on both sides at length. We have been taken through all the relevant records. We are not satisfied that the impugned judgment of the High Court can be sustained in view of the fact that the High Court did not have the advantage of advertng to the principle laid down in the decision of this Court in Sanwarmal Kejriwal v. Vishwa Co-operative Housing Society Ltd. (1990) 2 SCC 288 : (AIR 1991 SC 1563), which was rendered subsequent to the impugned judgment. After that decision was rendered by this Court, a Review of the impugned judgment was sought, but the Review Application was not accepted by the High Court.

3. The facts do not seem to be very clear from the pleadings filed by the parties before the statutory Tribunal. It would be just and fair if the parties are given an opportunity to file affidavits stating the relevant facts from the respective points of view. One fact which is not very clear from the records produced before us is whether or not the appellant was inducted into the premises by a person who was a member of the society or a power of attorney holder acting on behalf of that member or the member has after the induction of the appellant into the premises accepted him and dealt with him as a tenant. If the appellant was not so inducted, his position then would not be that of a person entitled to the protection of the relevant law. On the other hand, if the appellant was so inducted into the premises, he would be entitled to the protection referred to in the decision of this Court in (1990) 2 SCC 288 : (AIR 1991 SC 1563) both in regard to the forum before which proceedings can be initiated for his eviction and the grounds upon which he can be evicted. This is, in fact, as we see it, a crucial question which does not appear to have been appreciated earlier in view of the lack of clarity of the legal position. But this question must be examined, and for that purpose, the parties must be given a fresh opportunity to file additional pleadings and, if necessary, to adduce additional evidence.

4. Accordingly, we set aside the impugned judgment of the High Court and the order of the High Court on Review Application and remand this case to the High Court for fresh consideration of the whole question with reference to the fact and law. It is open to the High Court either to call for fresh evidence and dispose of the case on the merits or remand the case to the appropriate authority for fresh findings as aforesaid.

5. The appeal is disposed of in the above terms. The parties shall bear their respective costs.

6. We make it clear that the appellant shall not be dispossessed from the premises during the

pendency of the proceedings, subject to the condition that all arrears, if any, payable by the appellant as of today shall be cleared within two months from the date of this order, and the rent or other amounts due' and payable in the future shall also be paid without default. Needless to say that such payment will be without prejudice to the respective contentions of the parties.

Order accordingly.

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