

SUPREME COURT OF INDIA

Laxmi Cooperative Housing Society Ltd.

Vs.

Kantilal Champaklal Kothari

(S Agrawal and G Nanavati JJ.)

24.10.1997

ORDER

1. Special leave granted.

2. The Laxmi Cooperative Housing Society Ltd. (hereinafter referred to as "the Cooperative Society") is a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Act"). Champaklal Harakchand Kothari was a member of the Cooperative Society. By resolution dated 14-1-1979 the Cooperative Society expelled him from the membership. An application was moved by the Cooperative Society before the Assistant Registrar, Cooperative Societies (hereinafter referred to as "the Assistant Registrar") under Section 35 of the Act seeking approval to the said resolution. The Assistant Registrar, by his order dated 3-10-1983, refused to grant the approval. The Cooperative Society filed an appeal against the said order of the Assistant Registrar before the Joint Registrar, Cooperative Societies (hereinafter referred to as "the Joint Registrar"). During the pendency of the said appeal, Champaklal Harakchand Kothari died on 14-7-1989. Respondents 1 to 3 are legal representatives of deceased Champaklal Harakchand Kothari. The Joint Registrar, by his order dated 30-4-1994, dismissed the appeal of the Cooperative Society on the view that since Champaklal Harakchand Kothari has expired nothing survives in the appeal. The writ petition filed by the Cooperative Society assailing the said order of the Joint Registrar has been dismissed by the Bombay High Court by the impugned judgment.

3. We have heard the learned counsel for the parties.

4. We are unable to agree with the view of the Joint Registrar as well as the High Court that as a result of the death of Champaklal Harakchand Kothari during the pendency of the appeal nothing survived in the said appeal filed by the Cooperative Society against the order of the Assistant Registrar. Since the death of Champaklal Harakchand Kothari had taken place after the passing of the resolution expelling him from the membership of the Cooperative Society, the validity of the action of the Cooperative Society in expelling Champaklal Harakchand Kothari from membership required to be considered in the appeal filed by the Cooperative Society against the order of the Assistant Registrar which was pending before the Joint Registrar at the time of his death. The death of Champaklal Harakchand Kothari could not have any effect on the maintainability of the said appeal because, in the event of the appeal being allowed and the order of the Assistant Registrar being set aside and the resolution for expulsion being approved by the Joint Registrar, the action of the Cooperative Society in expelling Champaklal Harakchand Kothari would take effect from the date of the resolution and the legal representatives of Champaklal Harakchand Kothari would have no claim to the membership of the Cooperative Society. On the other hand, in the event of the appeal being dismissed, Champaklal Harakchand Kothari would be deemed to have continued as a member of the Cooperative Society at the time of his death and his legal representatives would be entitled to the benefit of such membership.

5. The appeal is, therefore, allowed, the impugned judgment of the High Court as well as the order of the Joint Registrar dated 30-4-1994 are set aside and the matter is remitted to the Joint Registrar for considering the appeal filed by the Cooperative Society on merits. No order as to costs.