

PETITIONER:
M/S ELECTRICAL CABLE DEVELOPMENT ASSOCIATION

Vs.

RESPONDENT:
M/S ARUN COMMERCIAL PREMISES COOPERATIVE HOUSING SOCIETY LTD

DATE OF JUDGMENT: 06/05/1998

BENCH:
A.S. ANAND, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Rajendra Babu, J.

This appeal is preferred by a Company incorporated under the Companies Act. The claim of the appellant is that an association which was an unregistered body known as "Indian Cables Maker's Association" was inducted in the year 1969 as a tenant in the premises Room No. 503, 5th floor, Arun Chambers, Tardeo, Bombay by respondent No. 2 under an agreement termed as 'leave and licence' dated 23rd September, 1969 at a rental of Rs. 1500/- p.m. out of which Rs. 1000/- was towards the premises and rent of Rs. 500/- p.m. was payable towards furniture and fixtures; that the name of the appellant was changed from Indian Cable Maker's Association into M/s Electrical Cable Development Association also another un-registered body in the month of August 1972 and with the said association also a similar leave and licence' agreement was executed by the respondent No. 2 on a rental of Rs. 1750/- p.m. out of which rent of Rs. 1,000/- was towards the premises and Rs. 750/- towards fixtures and furniture; that in the year 1976 the unregistered body decided to convert itself in to a company in order to carry on its affairs more effectively and so registered as such under the Companies Act, 1956; that respondent No.2 continued to receive rents from appellant in respect of the said premises. The appellant had also been using parking space in the building in question and had been making regular payments to respondent No.1 Society; that the appellant filed a suit for declaration in the year 1981 in the Court of Small Causes at Bombay that they are tenants in respect of the suit premises; that the second respondent filed as suit bearing No. 210/296 of 1981 seeking for eviction of the appellant; that when those proceedings were pending, Respondent No. 2 egged upon respondent No.1 to raise a dispute in terms of Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") for the purpose of evicting the appellant to enable respondent No.2 to get the said premises and use personally through an arbitrator; that the Arbitrator made an award on 23.3.1990 directing eviction of the appellant and that the second respondent be directed to use the suit

premises personally; that the appellant filed an appeal against the said award before the Maharashtra State Co-operative Appellate Court which was further dismissed by an order made on 8.1.1991; that a writ petition was thereafter preferred under Article 227 of the Constitution before the High Court of Bombay; that by an order made on 2.4.1991 the High Court upheld the order made by the Maharashtra State Co-operative Appellate Court and dismissed the writ petition however giving time to the appellant to vacate the premises by about a month. Hence this appeal by special leave.

On 20th August, 1991, this Court made an order calling for a report from the appellate court after giving an opportunity to the appellant to examine such of its witnesses as are considered necessary to prove the receipts and the agreement and allow the respondent also a similar opportunity of rebuttal by leading evidence both oral and documentary. A report has been received by this Court pursuant to the said order. The findings recorded by the appellate court and against the appellant.

Shri Mukul Rohtagi, learned Senior advocate for the appellant contended that (1) the dispute between the appellant and the second respondent arising under the Bombay Rent Act is pending consideration in a court of competent jurisdiction and, therefore, the authorities exercising powers under Section 91 of the Maharashtra State Co-operative Societies Act could not exercise their jurisdiction in the matter; (2) that the finding recorded by the appellate court and affirmed by the High Court that the appellant-Company is a distinct legal entity which came into existence in 1976 and is in occupation of suit premises without any agreement of leave or licence is incorrect inasmuch as the appellant company is only a successor to the two un-registered bodies referred to earlier; and (3) that the finding recorded by the appellate court pursuant to the directions issued by this Court on 20th of August, 1991 are not correct.

Section 91 of the Act provides for raising a dispute inter alia touching upon the business of a cooperative society. When a question was raised as to where a society builds houses of the members and such members let out the premises, whether it would be within the scope of business of the society, this Court in *O.N. Bhatnagar vs. Ruki Bai* (1982 (2) SCC 244), answered the same. It was held that if the business of the Society is to construct or buy houses and let them out to its members, such letting out would form part of its business. A society formed with the object of providing accommodation to its members which is its normal business activity and has to ensure that the premises are in occupation of its members in accordance with the bye-laws framed by it rather than of a person in unauthorised occupation as it is the concern of the members who let it out to another under an agreement to leave a licence and wants to secure possession of the premises for his own use after the termination of the licence. Therefore, a claim by the Society together with such member for ejection of a person who was permitted to occupy, upon the revocation of a licence, is a dispute falling within Section 91(1) of the Act. The same view has been reiterated by this Court in *Samwanwal Kejriwal vs. Vishal Cooperative Housing Society Ltd. and Others* [(1990) 2 SCC 288]. Therefore, it would not be open to the appellant now to contend that the proceedings before the authorities functioning under Section 91 of the Act would be barred notwithstanding the proceedings filed by respondent No. 2 before the small causes Court. As held by this Court in the aforesaid decisions the proceedings under

the Act could be maintained and , therefore, we are of the view that the first contention raised by Shri Rohtagi deserves to be rejected.

Plethora of material was placed before the authorities and we were also taken through the same to show that there was in existence an unregistered body known as M/S Electrical Cable Development Association and also M/S Indian Cable Maker's Association, its predecessor. However, there is no material on the record to show that the appellant is the successor to such association. We have also carefully gone through the Memorandum of Association and the Articles of the appellant-Company to find out whether in any form the unregistered body has converted itself into a registered body as a Company. On the other hand, what is stated in clause 3(a) in regard to membership is as follows:-

"3 (a) Every person who shall be a member of the unregistered association known as "Electrical Cable Development Association" at the date of registration of this Association shall be entitled as of right to be admitted as a member of this Association on his submitting a formal application addressed to the Secretary of the Association agreeing to be bound by the Rules and Regulations and Bye-laws made under these presents. Such a fee but shall have to pay deposit as per Rule 5, within the period as may be prescribed and extended by the Executive Committee."

All that is provided under the said Article is that member of Electrical Cable Development Association as of right be admitted as a member of the appellant Company subject to certain conditions. It does not say that all those members in the unregistered association became members of the association much less any resolution is produced before us of the Electrical Cable Development Association to show that they are converting themselves into an incorporated body. The members of the unregistered body are all incorporated bodies having a high commercial standing in the corporate sector, and therefore, cannot be expected to be so have or ignorant as not to take such steps in the event it was the intention of such body to become an incorporated body in the manner suggested by the appellant. If really such action had been taken, it would not have been difficult for the appellant to produce such material. Therefore, the fact that the appellant is a distinct legal entity as found by the authorities below and affirmed by the High Court, cannot be seriously disputed. Since the appellant is a distinct legal entity other than the unregistered bodies and there is no material to show that it is a successor thereto it is not understandable a sot how it became a tenant in respect of the premises in question, without an agent with the Society or respondent No. 2 who is a member thereof. it baffles us and thus the view taken by the High Court appears to us to be correct. Therefore, the second contention raised by the appellant either has no merit and is rejected.

So far as the third contention urged on behalf of the appellant is concerned in the view we have taken, we may at once state that it is not necessary to examine the evidence adduced before the appellate court and the appreciation of the same by it. Even without deciding the same if we assume

the same for the purpose of appreciation of the matter that the findings recorded by the appellate court are not correct and deserve to be answered in favour of the appellant, still the appellant has to fail in view of the finding we have recorded on the second contention raised by the appellants.

Therefore, we hold that the High Court was justified in not interfering with the order made by the appellate court and the appeal deserves to be dismissed. The appeal is dismissed accordingly. However considering the nature and circumstances of the case, we make no order as to costs. In the circumstances of the case, we make no order as to costs. In the circumstances of the case, we grant time to the appellant to vacate the premises till 31st of December, 1998 subject to the condition that it shall voluntarily, without putting the respondents to the necessity of any execution deliver vacant possession of the premises to respondent No.2 and shall furnish the usual undertaking to that effect within four weeks from today.