

PETITIONER:
HINDUSTAN THOMPSON ASSOCIATES LTD.

Vs.

RESPONDENT:
MRS. MAYA INDERSON ISRANI & ORS.

DATE OF JUDGMENT 19/09/1988

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
SEN, A.P. (J)

CITATION:
1989 AIR 87 1988 SCR Supl. (3) 29
1988 SCC (4) 745 JT 1988 (3) 786
1988 SCALE (2) 820
CITATOR INFO :
D 1990 SC1563 (14,15)

ACT:
Bombay Rents, Hotel and Lodging House Rents (Control) Act, 1947: Sections 5, 15A and 21-Cooperative Housing Society-Possession of flat obtained through member of Society who has committed breach of bye laws--Society call seek eviction under Section 91 Maharashtra Cooperative Societies Act, 1960 Rent Act inapplicable.

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Maharashtra Cooperative Societies Act, 1960: Section 91-Cooperative housing society-Cooperative Court/Tribunal has jurisdiction to order eviction from flat.

HEADNOTE:

Respondent No. 2, a Co-operative Society allotted a flat to respondent No. 1. Respondent No. 2 sought recovery of possession of the flat on the ground that the appellant was inducted into the flat without the written consent of the Society. The appellant pleaded that it was continuing in possession of the flat on the basis of the lease and licence agreement by payment of licence fee, and as such the dispute did not come within Section 91 of the Co-operative Societies Act as it had become as tenant under Section 15A of the Bombay Rent Act. The Cooperative Court after hearing all the parties made an award holding that the dispute fell within the jurisdiction of the Cooperative Court and that the appellant was occupying the flat in question as a trespasser after the licence in its favour was terminated and that there was no subsisting licence to occupy the flat by the appellant on 1st February, 1973 and so Section 15A of the Bombay Rent Act was not applicable.

The appellant's appeal to the Appellate Authority and writ petition to the High Court having been dismissed, the appellant appealed by special leave to this Court.

Dismissing the Appeal,

HELD: 1. The appellant is an outsider who has been permitted to possess the suit premises as licensee of respondent No. 2 in contravention of the Rules, bye-laws and regulations of the society. The dispute falls squarely within the provision of section 91 of the Maharashtra

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Cooperative Societies Act 1960 and the Cooperative Court has exclusive jurisdiction to entertain and decide the dispute and not the Court under the Bombay Rent Act, 1947.

M/s. A.V.R. & Co. & Ors. v. Fairfield Cooperative Housing Society Ltd., [1988] Supp. 3 S.C.R.48.

2. The decree will not be executed for a period of four months. The appellant will not transfer, assign or encumber the flat in any manner whatsoever, and hand-over peaceful possession of the flat on or before the expiry of the aforesaid period. He will go on paying the occupation charges equivalent to the amount he had been paying for each month 7th of succeeding month. In default of compliance the decree shall become executable forthwith. [31E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 567 of 1987.

From the Judgment and Order dated 12.1.1987 of the Bombay High Court in W . P . No. 124/ 1987.

B . R. Agarwala for the Appellant.

Dr. L.M. Singhvi, P.K. Banerjee, S.K. Jain, L .A. Kriplani. Dr. A.M. Singhvi and S. Bandopadhyaya for the Respondents.

The Judgment of the Court was delivered by

B.C. RAY, J. The member of society Mrs. Maya Inderson Israni who has been allotted the flat No.62 on 6th floor of Nibhana Building by the disputant No.2, the Nibhana Co-operative Housing Society. Ltd. and the society filed a dispute before the Judge Fifth Cooperative 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 th 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 1st October 1972, the member, that is, the respondent No.2 terminated the licence and called upon the appellant to remove itself from the said flat. Thereafter an advocate s Letter dated 1st October 1972 was sent by the respondent No. 2 to the appellant for vacating the flat. The appellant having failed to comply with the request a dispute was filed by the

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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 uptill 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 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 1st February. 1973 and so Section 15 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. 1'4 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.

In view of our judgment in C.A. No. 472 of 1985, 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 filling 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.

N .V.K.

Appeal dismissed.