

Sabharwal Brothers & Another vs Smt. Guna Amrit Thandani Of Bombay on 29 March, 1972

Equivalent citations: 1972 AIR 1893, 1973 SCR (1) 53, AIR 1972 SUPREME COURT 1893, 1973 3 SCC 750, 1972 MAH LJ 813, 1972 SCD 771, 1973 (1) SCR 53

Author: A.N. Grover

Bench: A.N. Grover

PETITIONER:
SABHARWAL BROTHERS & ANOTHER

Vs.

RESPONDENT:
SMT. GUNA AMRIT THANDANI OF BOMBAY

DATE OF JUDGMENT 29/03/1972

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
GROVER, A.N.

CITATION:
1972 AIR 1893 1973 SCR (1) 53
CITATOR INFO :
D 1982 SC 1097 (21,22)
D 1989 SC 81 (8)
D 1989 SC 122 (11)

ACT:
Cooperative Society ---Flat sold to member by Society
--Member letting out flat to another member-Dispute between
landlord and tenant as to continuance of tenancy-Such
dispute whether touches business of society whether can be
referred to Registrar for adjudication under s. 91(1)(b) of
Maharashtra Cooperatives Societies Act 1960 (24 of 1961).

HEADNOTE:
The respondent was the owner of the flat on the second floor
of a Building in Bombay. She was a member of a Co-operative
Housing Society and had acquired the flat from that society.

In 1959 she had put the appellant in possession of the flat for a period of 11 months on payment of Rs. 5101- per month. According to the written agreement the possession was given on leave and licence basis. The agreement was signed by one of the partners of the appellant firm who also became members of the said Co-operative Society. The agreement was renewed until 25th October, 1962 when the first respondent asked the appellants to vacate possession on the ground that she required the flat for personal occupation. As this was not complied with she filed a statement of claim before the Registrar of Co-operative Societies on the ground that there was a dispute within the meaning of s. 91(1) of the Maharashtra Co-operative Societies Act. The Registrar referred the case to a nominee whose jurisdiction was challenged by the appellants. Nevertheless the proceedings before the nominee went on for some time and on July 3, 1964 the nominee made an award to the effect that the appellants were occupying the flat on leave and licence basis. The appellants, anticipating the award, filed a suit in the Court of Small Causes Bombay stating that they were in occupation of the flat as tenants and as such entitled to protection under the Bombay Rent Act, 1947. The Small Causes Court held that the suit was maintainable and answered the other preliminary issues in favour of the plaintiff. In revision the bench of the Small Causes Court held that the Registrar's nominee did have jurisdiction to try the dispute between the parties and remanded the proceedings to the trial court for disposal of the suit after deciding an issue as to res judicata by reason of the award of the nominee. The High Court up-held the order of the bench. In this Court the questions that fell for consideration were (1) Whether there was any dispute between the parties touching the business of the co-operative society which could be decided by the Registrar or referred by him to a nominee for disposal and (2) Whether the suit filed in the Small Causes Court was maintainable having regard to the nature of the relief sought.

Allowing the appeal

HELD : (i) No doubt it was a business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the by-laws and a breach of the byelaws could affect the defaulting member's right to membership. But

HELD : (i) No doubt it was a business of the society to let out touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with cooperative principles. The letting of flat by respondent No. 1 was a transaction of

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the same nature as the society if it was empowered to enter into but such letting out itself did not concern the business of the society in the matter of its letting out flats. There was nothing to show that such letting would

effect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under, the society. "To touch" means "to come in contact with" and it did not appear that there was a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the land lord of the flat. [57D-G]

(ii) As observed by this Court in an earlier case the Bombay Rent Act and the Maharashtra Cooperative Societies Act can be harmonised best by holding that in matters covered by the Rent Act, its provisions rather than the provisions of the Co-operative Societies Act, should apply.

[58A]

Deccan Merchants Co-operative Bank Ltd. v. M/s, Dalkhand Jugraj Jain and others, [1969] 1 S.C.R., 887, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: C.A. No. 1574 of 1971. Appeal by special leave from the judgment and order dated July 6/7, 1971 of the Bombay High Court in Special Civil Application No. 619 of 1971.

S. V. Gupte and P. N. Tiwari, for the appellants. K. S. Chawla, S. N. Mishra and S. S. Jauhar, for the respondents.

The Judgment of the Court was delivered by Mitter, J. -This is an appeal by special leave from a judgment and order of the Bombay High Court in a Special Civil Application from a decision. of the Court of Small Causes Bombay in exercise of its revisionary jurisdiction. The revisional court had reversed the decision of the trial court and remanded the matter for disposal ,of the issues other than issues 2 to 8 tried as preliminary issues and decided in favour of the plaintiffs before the Court of Small Causes.

The facts are as follows. Respondent No. 1 was the owner of a flat on the second floor of Block No. 8 'Shyam Niwas', Warden Road, I Bombay. She was a member of a Co-operative Housing Society and had acquired the flat from the said society. In 1959 she had put the appellant Sabharwal Brothers in possession of the flat for a period of 11 months on payment of Rs. 510/- per month. There was an agreement in writing which purported to show that the possession was to be on leave and licence basis. This agreement was signed by a partner of Sabharwal Brothers who also became member of the said Co-operative Society. There were repeated renewals of the said agreement until 25th October, 1962 when the first respondent asked the appellants to vacate possession on the ground that she required the flat for her personal occupation. As this was not complied with, she filed a statement of claim before the Registrar of Co-operative Societies on the ground that there was a dispute within the meaning of s. 91(1) of the Maharashtra Co-operative Societies Act (Thereinafter referred to as the 'Act') which required adjudication There was a challenge to the jurisdiction of the nominee of the Registrar to whom it was referred by the appellants. The proceedings before the

nominee went on for some time on July 3, the nominee made an award to the effect the, appellants were occupying the flat on leave and licence basis. Anticipating the award the appellants filed a suit in the Court of Small Causes Bombay stating that they were in occupation of the flat as tenants and as such entitled to protection under the Bombay Rent Act, 1947 and the first respondent had no right to evict them. In her written statement the defendant denied that the plaintiffs were tenants contending, inter alia, that the plaintiffs were occupying the flat only on leave and licence basis etc.; that the dispute between the parties had been referred to the Registrar of Co-operative Societies for disposal and finally that the Court of Small Causes had no jurisdiction to entertain and try a suit involving such a dispute. The Small Causes-Court framed no less than twelve issues of which issues 2 to 8 related to the maintainability of the suit and the jurisdiction of the court in view of the provisions of s. 91 (1) (d) of the Act. The Small Causes Court held that the suit was maintainable and answered the other preliminary issues in favour of the plaintiff. The matter was taken in revision to a Bench of the said Small Causes Court. The Bench took a different view holding that the Registrar's nominee did have jurisdiction to try the dispute between the parties and remanded the proceedings to the trial court for disposal of the suit after deciding on issue as to res judicata by reason of the award of the nominee.

The High Court dismissed the Special Civil Application of the plaintiffs holding that the revisional court of the Small Causes was justified in coming to the conclusion that- it was not open to the plaintiffs to contend that the Registrar or his nominee had no jurisdiction to entertain the dispute on the two grounds on which it was challenged. Before us the main points urged on behalf of the appellants were: first, whether there was any dispute between the parties touching the business of the Co-operative Society which could be decided by the Registrar or referred by him to a nominee for disposal; and, secondly whether the suit filed in the Small Causes Court was maintainable having regard to the nature of the relief sought. The central question, therefore, is, whether the dispute between the parties is capable of reference under the Act. The relevant portion of s. 91 (1) (b) of the Act runs as follows (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution ..management or business of a society shall be referred by any of the parties to the dispute.... if both the parties thereto are one or other of the following:--

(a).....

(b) a member, past member or a person claiming through a member etc..."

s. 91(3) provides :

"Save as otherwise provided under subsection (3) of section 93, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

We may also note the relevant portion of s. 163 (1) which provides:

I) Save as expressly provided in this Act, no civil or revenue court shall have any jurisdiction in respect of-

(a)

(b) any dispute required to be referred to the Registrar, or his nominee

(c) Before the Court of Small Causes reference was made to bye-

law No. 2 of the Society to show that the objects of the society were inter alia to carry on the trade of buying, selling, hiring and letting land in accordance with the co-operative principles and under Regulation No. 5 in form 'A' printed at the end of the bye-laws "No tenant shall assign, underlet, vacate or part with the possession of the tenement or any part thereof without the consent in writing of the society."

The Bench of the Court of Small Causes referred to the above provisions and observed that the bye-laws of the society constituted an agreement between the members of the society and a breach thereof would affect the defaulting member's right of membership of the society and consequently a dispute relating to the letting of the flat was a dispute which touched the business of the society.

(Mitter, J.) The High Court referred to s. 91 of the Co-operative Societies Act. and S. 28 of the Bombay Rent Act and observed:

"There is a competition between two authorities, a court and the Registrar's nominee, both exercising exclusive jurisdiction in respect of matters coming within their jurisdiction."

and concluded that on general principles of law it would not be proper to allow the same question to be agitated again under a different guise. It also observed that the decision taken by the Assistant Registrar and the nominee could have been decided by an appeal and as no appeal had been filed the provisions of law must have their effect with the result that the decision of the dispute by the nominee of the Registrar had become final.

With all respect to the High Court, it seems to us that there was a fundamental error in the above approach. No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-laws and a breach of the bye-laws could affect the defaulting member's right to membership. But we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with co-operative principles. The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the society in the matter of its letting' out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the landlord of the flat. Reference was made at the Bar to Deccan Merchants Co-opera-

tive Bank Ltd. v. M/s Dalichand Jugraj Jain and others('). The facts there were very different from those of the instant case.

(1) [1969] 1 S.C.R. 887.

5-LI208 Sup C I/72 But the Court had to consider the question of competing jurisdiction under the Bombay Rent Act and the Act and it is pertinent to note the observations at p.902"that the two acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply."

In the result we allow the appeal, set aside the judgement and order of the High Court And of the Bench of the Court of Small Causes. The matter is now to go back to the Court of Small Causes for disposal according to law. The appellants will have the costs incurred in this Court. Appeal allowed.

G.C.