

CASE NO.:
Appeal (civil) 5790 of 1998

PETITIONER:
NARENDRA K. KOCHAR

Vs.

RESPONDENT:
SIND MAHARASHTRA COOP. HOUSING SOCIETY LTD. & ORS.

DATE OF JUDGMENT: 09/07/2002

BENCH:
R.C. LAHOTI, B.N. AGRAWAL.

JUDGMENT:

B.N. AGRAWAL, J.

This appeal by special leave is against the judgment rendered by Bombay High Court whereby Writ Application filed by the appellant has been dismissed, upholding order of the Maharashtra State Co-operative Appellate Court, dismissing appeal preferred by the appellant against his order of eviction from the premises in question passed by the Co-operative Court, purporting to act under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Societies Act').

The short facts are that Sind Maharashtra Co-operative Housing Society Limited, respondent no. 1, [hereinafter referred to as 'the Society'] was a tenant co-partnership housing society and one B.D. Punjabi, respondent No. 2, was its member as tenant co-partner in relation to flat No. 5 allotted to him in Ashiana Building of the Society. Respondent No. 2 who was put in possession of the aforesaid flat, put the appellant in occupation of the same in December, 1970, without previous consent of the Society, as a licensee initially at the monthly rate of Rs. 325/- which was later enhanced to Rs. 450/-. Respondent No. 2 defaulted in payment of dues of the Society from March 1977 and the appellant who was occupier was causing nuisance to the members of the Society. Stating the aforesaid facts, the Society instituted the present proceeding bearing Arbitration Case No. ABN 634/754 of 1977 for, inter alia, recovery of vacant possession of the aforesaid flat, both from respondent No. 2 as well as the appellant. Further prayer was for directing respondent No. 2 to pay dues of the Society. The Society's dispute was referred by the Registrar, Co-operative Societies to Officer on Special Duty under Section 91 of the Societies Act which, after amendment of the Societies Act, was transferred to the Co-operative Court under Section 91A of the Societies Act.

The claim of the Society was resisted by respondent No. 2 on grounds, inter alia, that the appellant was a mere licensee who was temporarily allowed to occupy the premises and that licence was also terminated. According to him, he was not a defaulter and the appellant did not cause any nuisance to any person much less any member of the Society. The appellant objected to the claim of the Society on the ground that even though he was a licensee, but as the licence was subsisting on 1st February, 1973, by virtue of the provisions of Sections 14(2), 15(2) and sub-section (1) of Section 15-A of the Bombay Rents, Hotel and Lodging

House Rates Control Act, 1947 [hereinafter referred to as 'the Rent Control Act'], he became a tenant, entitled to claim protection as such and could not be evicted from the premises in question without taking recourse to the provisions of the Rent Control Act, as envisaged under Section 22 thereof inasmuch as the proceeding initiated under Section 91 of the Societies Act was not maintainable. His further case was that during the pendency of the present proceeding, he filed a suit against respondent No. 2 in relation to the premises in question for a declaration that he was tenant of respondent No. 2 who contested the same. The said suit was dismissed by the Small Causes Court, but on appeal being preferred the same was decreed which attained finality as Writ Application filed against the appellate order was withdrawn.

The Co-operative Court by its judgment dated 16.10.1989 found that respondent No. 2 was not a defaulter, but as the appellant was put in occupation of the premises in question by respondent No. 2 as a licensee without previous consent of the Society, both of them were liable to be evicted. So far as the ground for nuisance was concerned, as the Court was inclined to pass an order of eviction, it did not consider the same on merit. Ultimately, the Court directed respondent No. 2 and the appellant both to vacate the premises in question upon determination by the Society of rights of respondent No. 2 as member and admitting a new member to the premises in question. Against the aforesaid order three appeals were preferred by each of the three parties before the Co-operative Appellate Court. Appeal filed by the appellant was dismissed whereas the other two appeals were partly allowed and order of eviction was upheld with this modification only that there was no necessity for making any determination by the Society with regard to the rights of respondent No. 2 as member. Thereupon, the appellant filed a Writ Application before the Bombay High Court and the same having been dismissed, the present appeal by special leave.

Mr. K. Rajendra Chowdhary, learned Senior Counsel appearing on behalf of the appellant, in support of the appeal submitted that as the appellant was put in occupation of the premises in question as a licensee prior to 1st February, 1973 and the licence was subsisting on that day by virtue of amendment made in the Rent Control Act in the year 1987, he was entitled to protection of the statute by virtue of the provisions of Sections 14(2), 15(2) and 15-A of the Rent Control Act under which he became a deemed tenant and in view of the provisions of Section 28 thereof he could not be evicted through any other proceeding much less Section 91 of the Societies Act, without taking recourse to the provisions of the Rent Control Act on the grounds enumerated therein inasmuch as the proceeding initiated under Section 91 of the Societies Act being not maintainable, orders passed therein are liable to be quashed on this ground alone. On the other hand, Ms. Indira Jaising, learned Senior Counsel appearing on behalf of respondent No. 1, and Mr. R.N. Keshwani, learned counsel appearing on behalf of respondent No. 2, submitted that the appellant did not acquire the status of a tenant and is not entitled to claim protection under the Rent Control Act as he was put in occupation of the premises in question as a licensee by the respondent No. 2 without the previous consent of the Society which was in breach of its bye-laws. In view of the rival submissions, the question which arises in this appeal is as to whether the appellant, who was occupying the premises in question as a licensee from before 1.2.1973 and whose licence was subsisting on that day, became a deemed tenant by virtue of the provisions of Sections 14(2), 15(2) and 15-A of the Rent Control Act and could be evicted in the purported exercise of powers under Section 91 of the Societies Act, without taking recourse to the provisions of the Rent Control Act in spite of the express bar engrafted under Section 28 thereof.

In our view, the point raised is no longer res integra as the same is concluded by a decision of this Court in the case of Sanwermal Kejriwal vs. Vishwa Co-operative Housing Society Ltd. & Ors., (1990) 2 SCC 288, which was a case where the proceeding was initiated against a licensee under Section 91 of the Societies Act. In that case a registered Co-operative Society admitted one Laxmi Devi Kejriwal to its membership on

March 2, 1949 and was allotted flat no. 25 who gifted her interest as the allottee member of Society to her brother, Ambica Prasad Sharma. One D.P. Kejriwal who was looking after this flat inducted one Sanwarmal Kejriwal therein with effect from June 1, 1957 under a leave and licence agreement on a licence fee of Rs. 400/- per month. While the licensee was in actual occupation of the flat, Ambica Prasad Sharma transferred his interest therein to his brother, Hari Kumar Sharma, who was admitted to the membership of the Society. Even after the transfer D.P. Kejriwal continued in management of the flat and collected and received licence fee from Sanwarmal Kejriwal till the middle of 1979 when he received a letter from Hari Kumar Sharma claiming ownership of the flat. The licensee thereafter filed an interpleader suit in the Court of Small Causes, Bombay, seeking a direction to whom he should pay the rent for the flat occupied by him which was disposed of whereafter Hari Kumar Sharma deposited with the Society the cost for initiating proceeding for eviction of the licensee from the flat in question under Section 91 of the Societies Act. Two days later, Hari Kumar Sharma filed a suit for eviction of the licensee from the flat in question in the Court of Small Causes, Bombay. Thereafter, the Society passed a resolution for initiating a proceeding under Section 91 of the Societies Act for eviction of the licensee from the flat in question and a notice to quit was served on the licensee and a proceeding was initiated under Section 91 of the Societies Act. The Co-operative Court came to the conclusion that the Society could maintain an action under Section 91 of the Societies Act notwithstanding the fact that the licensee became the tenant under Section 15-A of the Rent Control Act qua the member-allottee and consequently it passed an order of eviction of the licensee. The said order was affirmed in appeal by the Co-operative Appellate Court as well as by the Bombay High Court in a Writ Application filed against the appellate order. Thereafter when the matter was brought to this Court on appeal by special leave, the same was allowed, all the orders impugned therein were set aside and the petition under Section 91 of the Societies Act was dismissed as not maintainable. Considering various decisions cited before it and taking into consideration different provisions of the Societies Act as well as Rent Control Act, this Court in that case harmonised the said provisions by holding that in the matter covered by the Rent Control Act, its provisions, rather than the provisions of the Societies Act, should apply. As the licensee in that case sought protection of Rent Control Act since he was a deemed tenant under Section 15-A thereof, the Court observed that the status of a tenant was conferred on him by law as the Legislature intended to extend the protection of Rent Control Act to such a licensee and the rights which do not flow from contracts but are conferred by law, such as Rent Control Act, must be determined by the machinery, if any, provided by the law conferring the right. It was laid down that "the submission that the appellant cannot seek protection against the Society as his entry into the flat was in violation of the bye-laws would have been valid had the statute not intervened. To take such a view would tantamount to carving out an exception in Section 15-A of the Rent Act that the said provision would not apply to licensees in occupation of flats owned by tenant-co-partnership societies. The language of Section 15-A read with Section 5(4-A) of the Rent Act does not warrant such a construction. The mere fact that there was a violation of the bye-laws would not make any difference for it is not unknown that even in cases of breach of statute, the Legislature has conferred protection on those guilty of breach if the prevailing circumstances so warrant e.g., sub-letting was prohibited by Section 15 but when the Legislature realised the need to protect the sub-tenants it did so by an ordinance promulgated in 1959. Similarly when the Legislature felt the need to protect licensees in occupation on February 1, 1973, it intervened by enacting Section 15-A. The legislative policy is quite evident from Section 15-A and the protection given to licensees cannot be taken away on the plea that the initial entry of the licensee in the flat was in breach of the bye-laws. If the occupant-licensee who is a protected tenant under Section 15-A can be evicted by the society on the plea of absence of privity between the society and the protected tenant, it would render the protection of Section 15-A redundant. The situation is more or less similar to the case of an owner-landlord

whose tenant had contrary to the terms of the contract introduced a licensee who is now protected by Section 15-A of the Rent Act. In such a case notwithstanding the absence of protected tenant, the latter cannot be evicted except in accordance with the provisions of the Rent Act. We, therefore, do not see any merit in the contention that notwithstanding the protection given by Section 15-A, the Society can proceed to evict him under Section 91 of the Societies Act on the plea that such a protection is not available against the Society. Such a view would defeat the legislative object of Section 15-A of the Rent Act".

Learned counsel appearing on behalf of the respondents heavily relied upon three decisions of this Court in the cases of O.N. Bhatnagar vs. Smt. Rukibai Narsindas & Ors., (1982) 2 SCC 244, A.V.R. & Co. & Ors. vs. Fairfield Co-operative Housing Society Ltd. & Ors., (1988) Supp. 3 SCR 84 and Electrical Cable Development Association vs. Arun Commercial Premises Co-operative Housing Society Ltd. & Anr., (1998) 5 SCC 396, all of which related to cases of licensees vis--vis proceedings under Section 91 of the Societies Act and after taking into consideration the provisions of Section 15-A of the Rent Control Act, the petitions under Section 91 of the Societies Act were entertained and granted. In our view, all the aforesaid cases are quite distinguishable. In the case of O.N. Bhatnagar (supra) co-partner-tenant-member inducted a licensee much before 1st February, 1973 on which day the statute intervened and the licence was terminated prior to that date. Therefore, as on 1st February, 1973 there was no subsisting licence, such a person could not get protection of the Rent Control legislation as he did not acquire the status of a tenant by legislative intervention and consequently the bar created under Section 28 of the Rent Control Act was not attracted as a result of which the petition under Section 91 of the Societies Act was held to be maintainable. Likewise, in the case of A.V.R. & Co. (supra), as the licence was not subsisting on 1st February, 1973, it was held that such a person was not entitled to claim protection under the Rent Control Act and the proceeding under Section 91 of the Societies Act was found to be entertainable. In the case of Electrical Cable Development Association (supra), claim put forth as a licensee was, on facts, negatived holding that there was no agreement of leave or licence and consequently it was held that such a person not being a licensee at all, much less subsisting licensee on 1st February, 1973, could not claim protection of Rent Control Act and consequently the petition under Section 91 of the Societies Act, for eviction of such a person by an order passed by the Co-operative Court, was rightly entertained. In the case on hand, as the licence of the appellant was subsisting on 1.2.1973, we are of the view that he being a protected tenant under the Rent Control Act, could not be evicted by initiating a proceeding under Section 91 of the Societies Act and passing orders therein by circumventing the provisions of the Rent Control Act whereunder no proceeding was resorted to and consequently the impugned orders were unwarranted.

We have resolved the legal issue arising for decision in this case. During the course of hearing, from reading the evidence adduced by the parties, an impression was created that the real cause for initiating the proceedings by the society against the appellant so as to get rid of him appears to be that he is not behaving himself and conducting in such a manner as to cause annoyance to other members of the society occupying the flats. The learned counsel for the appellant assured the Court during course of hearing that the appellant shall be advised not to cause any trouble or inconvenience to other residents in the society, to abide by the laws of the society and also to see that there are no outstandings against him. In that regard the appellant filed an affidavit on 4th April, 2002 which reads as under:-

"2. In accordance with the directions of this Hon'ble Court, I respectfully undertake to follow and abide by the Bye Laws and Regulations of the 1st Respondent-Society as contained at pages

32 to 74 of Vol. II of the paper book in the above appeal and as amended by the Society from time to time.

3. I respectfully state that I have paid to the Ist Respondent-Society a sum of Rs. 2,47,962/- and a further sum of Rs. 57,738/- towards interest @ 18% in terms of this Hon'ble Court's order dated 16th April, 2001 made in Review Petition No. 1233 of 2000. In all a sum of Rs. 3,05,700/- was paid by me on 29th July, 2001 to the Ist Respondent-Society. The aforesaid amount of Rs. 2,47,962/- includes: (i) Repayment of Loan and interest thereon, (ii) Building Maintenance, (iii) Municipal Taxes, (iv) Parking Charges, (v) Water Charges, (vi) Service and Maintenance Charges, (vii) Sinking Fund, (viii) Interest on arrears, (ix) Building repairs charges.

4. I further submit that in addition to the aforesaid amount I have paid the rent/compensation @ Rs. 450/- per month to the Ist Respondent-Society right upto November, 2001 in terms of Order dated 4.2.1982 passed by the Maharashtra State Co-operative, Appellate Court and a true copy of the same is enclosed as Annexure 'P1'. In fact the Ist Respondent-Society admitted in its own statement of account Annexure 'A' at pages 25-26 annexed to its own application I.A. No. 3 of 1999 that I paid Rent upto September, 1996. Further, I paid rents right upto November, 2001. I undertake to pay rent @ Rs. 450/- per month from December, 2001 to April, 2002, within 15 days from today. I further undertake to pay the monthly rent of Rs. 450/- to the Society by 15th of every month."

Without expressing any opinion on the contents of the affidavit we have simply taken the same on record.

In the result, the appeal is allowed, impugned orders are quashed and petition under Section 91 of the Societies Act filed by the Society is dismissed as not maintainable. In the facts and circumstances of the case, parties shall bear their own costs.