
(1982) 06 BOM CK 0019

In the Bombay High Court

Case No : Miscellaneous Petition No. 1313 of 1978

Damodar Mohanlal Thakkar and Others

APPELLANT

Vs

Maharashtra State Co-operative Appellate Court and Others

RESPONDENT

Date of Decision : 28-06-1982

Acts Referred:

Citation : (1982) 1 BomCR 945

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : N. Raja and D.H. Mehta, for the Appellant; R.C. Master, for respondent No. 3, L.C. Chougule, for respondent No. 4, S.C. Kapadia, for the Respondent

Judgement

S.C. Pratap, J.—One Suryaprabhadevi Nandkishore Singhal, respondent No. 4 herein filed an application, being Arbitration Case No. ABN/1335 of 1976, before the Second Co-operative Court for Greater Bombay u/s 91 of the Maharashtra Co-operative Society Act, 1960 (hereinafter referred to as "the Act"). This was a dispute relating to flat No. 4 in Kalpana Co-operative Housing society Ltd. situated at Marine Drive, Bombay. Claim made therein, inter alia, was to the effect that the Co-operative Housing Society, respondent No. 5 herein had been unreasonably refusing to accept her as being entitled to the shares and the interest in the aforesaid flat despite the nomination made in her favour by the last holder thereof, namely, Jayaben. The aforesaid dispute came to the knowledge of the petitioners herein who thereupon made an application to the Co-operative Court for adding them as parties to the said dispute on the ground that they are the heirs and legal representatives and the next of kinds of deceased, Jayaben Nani Thakkar to whom the said flat belonged. The petitioners challenged the nomination on the basis whereof the nominee Suryaprabhadevi had initiated the dispute and was seeking reliefs claimed therein.

2. The Co-operative Court which heard the present petitioners aforesaid application rejected the same on the ground that they were neither necessary

nor proper parties. This rejection was challenged by preferring against the same, revision application to the Co-operative Appellate Court. The revisional application was dismissed by the said Court. Hence this petition challenging these orders of the authorities below refusing to make the petitioners parties to the pending case initiated as indicated by respondent No. 4 herein Suyaprabhadevi.

3. In support of the petition I have heard Mr. N. Raja, learned Counsel for the petitioners, Suryaprabhadevi, who initiated the dispute is respondent No. 4 herein represented by here learned Counsel Mr. L.C. Chougule. The Co-operative Housing Society is represented by its learned Counsel Shri S.G. Kapadia. The State of Maharashtra is represented by its learned Counsel Mr. R. C. Master.

4. The State of Maharashtra is made a formal party to the present dispute. The Co-operative Society in question represented by Mr. S. G. Kapadia, supported this petition contending, inter alia that no prejudice will be caused to the disputant if the petitioners are made parties to the dispute in question and are given an opportunity of being heard in that behalf on the merits of the said dispute. Mr. Raja, learned Counsel for the petitioners, has strenuously contended that application by the petitioners was a simple application by persons claiming to be the heirs and next of kinds of the deceased Jayaben. They were consequently proper parties to the instant dispute. The authorities below, therefore, erred in not granting the application in that behalf. Mr. Chougule, the learned Counsel for the contesting respondent Suryaprabhadevi contended that this was a case where a dispute had been raised u/s 91 of the Act, because the society inspite of there being a valid nomination refused to transfer the right title and interest in question in favour of Suryaprabhadevi Nandkishore Singhal. The petitioners were neither necessary nor proper parties. If the petitioners desire to contest their claim, it is open to them to do so by an independent proceeding, but not by becoming parties to the present dispute.

5. Hearing the rival submission of the respective Counsels and going through the impugned orders, I find that the case of the petitioners falls squarely within the provisions of section 94(3)(c) of the Act. Person coming forward before the Court and claiming to be the heirs of the deceased Jayaben and, therefore, in consequence claiming right, title and interest in the flat in question should not have been shut out in limine but should have in the interest of justice, been given opportunity of having their claim appropriately investigated and adjudicated. Section 94(3)(c) further contemplates adding a party shows presences may be necessary to effectually and completely adjudicate upon and settle all questions involved in the dispute. By adding the petitioners as parties, all questions involved could have been effectually and completely decided and settled. But by rejecting the application for being made parties, all questions involved cannot be said to be, even thereafter capable of being decided effectually and completely. Therefore, left to myself, I would have granted the petitioners application for being made parties.

6. The difficulty in the way of the petitioners, however, is that the impugned concurrent orders are passed in discretionary justification u/s 94(3)(c). It is not possible to hold that discretion has been exercised arbitrarily or capriciously so as to warrant interference by this Court in its writ jurisdiction. Therefore, only because this Court is inclined to take a different view of the matter, it would not be correct to interfere. It is only on this short ground that I am not inclined to disturb the impugned orders.

7. At the same time, I cannot lose sight of the fact that the petitioners claim to be the heirs of the deceased Jayaben and consequently claim right, title and interest in the flat in dispute and the shares in question. It is, at this stage not possible to go into the merits of their said claim. But justice does require that their grievance and their claim should be heard and decided on merits and in accordance with law. It is the very contention of the learned Counsel Mr. Chougule for the contesting respondent Suryaprabhadevi that the claim of the petitioners would also be governed by section 91 of the Act and nothing, therefore, prevents the petitioners to independently apply u/s 91 and have the dispute investigated and adjudicated. Mr. Raja, learned Counsel for the petitioners submits that the petitioners would make the necessary application u/s 91 of the Act. He prays for reasonable time in that behalf.

8. Considering all the facts and circumstances of the case, I feel that the petitioners should initiate proceeding u/s 91 of the Act impleading therein, inter alia, Suryaprabhadevi Nandkishore Singhal and the Co-operative Housing Society in question as party-defendants. If the petitioners apply accordingly u/s 91 of the Act, the said proceedings should be heard and decided along with the presently pending dispute u/s 91 initiated by respondent No. 4 Suryaprabhadevi Nandkishore Singhal. Both these disputes should be heard and decided together. For making the said application, I would grant the petitioners time till 31st July, 1982.

9. In the result, the orders passed by the two courts below are confirmed. The petitioners, however, are granted time till 31st July, 1982 to make an independent application u/s 91 of the Act. If such an applications is made within the said time the same shall be heard and decided along with the presently pending dispute, being Arbitration Case No. ADN/II/436/1335 of 1976, initiated by respondent No. 4 herein Suryaprabhadevi Nandkishore Singhal. Both these disputes should be adjudicated on merits and in accordance with law. If the petitioners fail to apply u/s 91 of the Act by 31st July, 1982, the presently existing dispute initiated at the instance of respondent No. 4 Suryaprabhadevi Nandkishore Singhal shall be taken up for hearing and shall be disposed of independently on its own merits and in accordance with law. It may be observed that since it has been the contention of respondent No. 4 herself that, instead of making an application for being joined as parties to her dispute, the petitioners should have made an independent application u/s 91 of the Act, such a latter application u/s 91, if made and filed by the petitioners, shall be considered to be

one fairly and squarely governed by the said provision of section 91 and no objection in the behalf shall be entertained on behalf of the said respondent No. 4 Suryaprabhadevi Nandkishore Singhal.

10. Subject to the observation and directions made hereinabove, rule on this petition stands discharged. In the circumstances of the case, however, there will be order as to costs.