

(1988) 09 SC CK 0026

In the Supreme Court Of India

Case No : Civil Appeal No. 567 of 1987

Hindustan Thompson Associates Ltd.

APPELLANT

Vs

Mrs. Maya Inderson Israni and Others

RESPONDENT

Date of Decision : 19-09-1988

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A

Citation : AIR 1989 SC 87 : (1988) 90 BOMLR 518 : (1988) 3 JT 786 : (1988) 2 SCALE 820 : (1988) 4 SCC 745 : (1988) 3 SCR 29 Supp : (1988) 2 UJ 767

Hon'ble Judges : B. C. Ray, J;A. N. Sen, J

Bench : Division Bench

Advocate : B.R. Agarwala, for the Appellant; L.M. Singhvi, P.K. Banerjee, S. K. Jain, L.A. Kriplani and A.M. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

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 the 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 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 u/s 15A 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 15A 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. 124 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.

2. 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.