

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7948 OF 2001@@
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(Arising out of Special leave petition No. 15805 of 2000)

Clover Co-operative Housing .. Appellant
Society Limited.

Vs.

Nariman Nasserwanji Dubash & Anr. .. Respondents

O R D E R@@
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Leave granted.

The respondents have been residing in a flat in Billimoria building on and from 1st May, 1960. On 16th May 1960, Dhunjishaw Hormasji Shunting Master died and his widow Mrs. Aimai became the tenant of the said flat. She continued to accept the paying guest charges from the respondents and issued receipt to them. A suit was filed in 1961 by the landlady of the building, Mrs. Poonawala against the said Mrs. Aimai for eviction from the premises on the ground of default in payment of rent. The agreement of 30th April, 1960 expired on 29th April, 1963. Shavakshaw Shunting Master allowed the present respondents to continue to occupy part of the premises as before on payment of the agreed amount of Rs.65/- and the respondents continued to occupy the said premises. At that stage the suit filed by Mrs. Poonawala was decreed against Mrs. Aimai and a decree of possession was

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granted. This decree for possession was put in execution when the respondents obstructed the execution of the decree by claiming to have an independent right not derived from the judgment debtor. An obstruction notice was taken out by Mrs. Poonawala in the Small Causes Court at Bombay which was dismissed by its judgment dated 5th September, 1968. The learned Judge of the Small Causes Court found that the nature of the document under which the present respondents claimed rights in the premises had an independent right not derived through the judgment debtor and, therefore, they were legally entitled to obstruct the decree.

Thereafter, another suit was filed by Mrs. Poonawala in the City Civil Court at Bombay being Suit No. 8719 of 1968 against the respondents for eviction on the ground that they are trespassers. The Suit was ultimately dismissed on 8.1.1988. Against that decision an appeal was preferred to the High Court which was allowed by holding that the respondents had entered into an arrangement of paying guest on the premises and, therefore, the decree of eviction passed against the tenant Mrs. Aimai was binding on them. Now, the respondents carried the matter to the High Court on the

Letters Patent side. The Division Bench in the L.P.A. proceeded to hold as follows:

.SP1

"In our view, therefore, these factors bear the stamp of licence and not that of a paying guest arrangement. It is true that the parties attached the label of paying guest arrangement to the document, described the persons as paying guests in the document. But, as held by the Supreme Court, the true legal categorisation of a document is within the province of the Court. Notwithstanding the label attached to the document by the parties, the Court is always entitled to construe the document and ascertain the intention of the parties in the light of the attendant circumstances. When we carry out this exercise, we are satisfied that the document dated 30th April, 1960 was not merely an agreement creating a facility of paying guest, but was something more in the nature of a licence in favour of the appellants."

.SP2

The Division bench, therefore, came to the conclusion that as a consequence of the introduction of Section 15A in the Rent Act, any person who is on 1st February, 1973 in occupation of any premises or any part thereof, which is not less than one room, as a licensee, is deemed to have become for the purposes of the Rent Act a tenant of the landlord in respect of the premises or part thereof under his occupation. Thus, as a result of the said provision, the respondents who were stated to have in exclusive possession of a part of Flat No. 11 of

Billimoria building as licensees became entitled to the rights of tenants within the meaning of the Rent Act in respect of the said Society. Therefore, the High Court set aside the order made by the learned Single Judge and restored that of the trial Court.

Mr. P.H. Parekh, learned counsel appearing for the appellant relied upon the decision of this Court in D.H. Maniar and Ors. Vs. Waman Laxman Kudav - (1976) 4SCC 118 to contend that the licence granted as found by the Division Bench is not protected if it has already been cancelled or not subsisting as on February 1, 1973 as is the case in the present matter. He pointed out that there was termination of the licence by notice dated 25th April, 1968 and when they were called upon the respondents to remove their goods. He also submits that the Division Bench did not decide the matter correctly nor did it apply the law as is required to be done.

Mrs. Meenakshi Arora, learned counsel appearing for the respondents submitted that the trial Court had dismissed the suit filed by the appellant on the ground that there was sub-tenancy created in favour of respondents which was protected under the Bombay Rent Act

which apparently is sustained by he Division Bench. She also contended that the appellant had agreed to enrol the respondents as members of the appellant Society to enable them to become regular tenants in respect of the premises in question. She, therefore, submitted that this appeal deserves to be dismissed.

We have gone through the judgments of the trial Court, First Appellate court as well as that of the Division Bench on the LPA side and we are of the view that the Division Bench of the High Court except to consider this aspect of the matter as to whether there was a licence in favour of the respondents or not did not consider the other questions arising in the matter nor did it firmly consider the nature of the licence in favour of the respondents to come to a conclusion one way or the other when there are divergent findings by the trial Court and the First Appellate Court the Division Bench ought to have considered several aspects arising in the case.

In the result, we have no other option but to set aside the order made by the High Court and remit the

matter to the High Court to re-examine the same afresh on merits as expeditiously as possible. The appeal is allowed accordingly.

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[S. RAJENDRA BABU]@@
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[DORAISWAMY RAJU]@@
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New Delhi,@@
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November 20, 2001.

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ITEM No.4

Court No. 6

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.15805/2000
(From the judgement and order dated 09/06/2000 in LPA 315/98
of The HIGH COURT OF BOMBAY)

CLOVER CO-OP. HOUSING SOCIETY LTD.

Petitioner (s)

VERSUS

NARIMAN NASSERWANJI DUBASH & ANR. Respondent (s)
(With prayer for interim relief)
(With Appln(s). for permission to file rejoinder affidavit)
(For Final Disposal)

Date : 20/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. P.H. Parekh, Adv.
Mr. Amit Dhingra, Adv.

For Respondent (s) Ms. Meenakshi Arora, Adv.
Mr. Haresh Mehta, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....J
.SP2

Leave granted.
Appeal is allowed in terms of the signed order.

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(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file