

ITEM NO.4

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11266/2010

(From the judgement and order(s) dated 17/02/2010 in WP
No.1094/2004 of The HIGH COURT OF BOMBAY)

KRISHNA H.BAJAJ

Petitioner(s)

VERSUS

BHARATIYA BHAVAN COOP.HNG.STY.LTD.& ANR

Respondent(s)

(With prayer for interim relief and office report)

Date: 09/11/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Shekhar Naphade, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agarwal, Adv.
Mr. E.C. Agrawala, Adv.

For Respondent(s) Mr. Ashok H. Desai, Sr. Adv.
Ms. Meenakshi Arora, Adv.

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

The special leave petition is dismissed
in terms of the signed order.

(O.P. Sharma)
SLP(C)NO.11266/2010

(Renu Diwan)

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Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL)NO.11266 OF 2010

KRISHNA H.BAJAJ

..Petitioner

VERSUS

BHARATIYA BHAVAN COOPERATIVE
HOUSING SOCIETY LTD. & ANR

..Respondents

O R D E R

Heard Mr. Shekhar Naphade, learned senior counsel
for the petitioner.

2. Although we do not fully agree with the reasons
given in the impugned order dated February 17, 2010 but in
our considered view the conclusion in the said order does
not suffer from any infirmity for the reasons we shall
immediately indicate hereinafter.

3. On February 9, 1986, in the Annual General Meeting
of the Bharatiya Bhavan Co-operative Housing Society Ltd.
(respondent No.1 and hereinafter referred to as
'Society'), a resolution No.5 was passed to the following
effect:

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"Resolved further that in future transfers,
apart from other dues, an amount equal to 3%
of the sale-value of flats/garages inclusive
of furnitures, fixtures etc. as contained in
the sale document/agreement be and hereby
recovered towards Transfer Charges."

4. The petitioner entered into an agreement with
Mrs. Preeti Umesh Khinji on March 30, 1992 for sale of
Flat Nos. 24 & 25 and 5 car parking spaces. The vendor
Mrs. Preeti Umesh Khinji, member of the society - applied
to the Society on April 9, 1992 for their "no objection"
to the sale and transfer of the shares pertaining to the
said flats and also the membership of the Society in
favour of the purchaser.

5. The Society pursuant to the request made by the vendor informed her of its no objection for transfer subject to the compliance of the conditions stated in the communication dated May 21, 1992 by the vendor and the purchaser. Some of the conditions of which compliance was required by the Society read as follows:

"An undertaking should be given by Mrs. Krishna Hari Narayan Bajaj that she would abide by the Bye-laws of the Society, arrange payment of Society's dues within the stipulated period, take responsibility for the payment of statutory dues for the period prior to the transfer which may be demanded by the authorities concerned at a later date after the transfer."

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xxx

xxx

xxx

To pay such other dues as may be payable at the time of Transfer.

xxx

xxx

xxx

The communication also records:

"We also put on record our appreciation to Mrs. Krishna Hari Narayan Bajaj, the Incoming Member for her willing and gracious contribution of Rs.9,63,000/- towards the Building Maintenance and Repair Fund since our Society's building is over fifty years old and badly requires maintenance and repairs. The payment should be made prior to taking the possession of the Flats or on or before 19.07.1992."

6. In compliance of the above, the petitioner (purchaser) sent a cheque of Rs.9,63,000/- drawn in favour of the Society and the documents referred to therein, with a forwarding letter dated July 8, 1992. Inter alia, the petitioner in her letter addressed to the Society stated as follows:

"Cheque for Rs.9,63,000/- drawn in favour of the Society on Standard Chartered Bank, D.N. Road Branch, Bombay bearing No.348236 being the gracious contribution towards the building maintenance and repair funds etc."

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7. After the payment was made and share certificates were transferred in favour of the petitioner on July 22, 1992, the petitioner raised a dispute before the First Cooperative Court of Bombay seeking refund of Rs.9,63,000/- paid by her to the Society. The disputant alleged that the demand of Rs.9,63,000/- to the Society was a pre-condition for transfer of share certificates of the flats and, thus, she was coerced, forced and compelled to make payment. She challenged the demand being illegal, ultra vires and contrary to the rules and regulations and Bye-laws of the Society and an example of colourful and arbitrary exercise of power by the Society.

8. The pleadings by the petitioner in the dispute runs in 17 foolscap pages. We carefully considered the same. Pertinently there is no direct challenge to the legality of the resolution dated February 9, 1986 whereby the Society resolved that in future transfers, apart from other dues, an amount equal to 3% of the of the sale-value of flats/garages inclusive of furnitures, fixtures etc. as contained in the sale document/agreement shall be recovered towards transfer charges.

9. Mr. Shekhar Naphade, learned senior counsel strenuously urged that the petitioner was coerced to part with a sum of Rs.9,63,000/- as the payment of the said

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demand was a condition precedent for transfer of share in favour of the disputant. He vehemently contended that payment of Rs.9.63,000/- by the petitioner was not voluntary. It is true that in its communication dated May 21, 1992 sent by the Society to the vendor, it has been indicated that payment of Rs.9,63,000/- should be made prior to taking possession of flats or on or before July

19, 1992 but the material available on record does not indicate that payment of Rs.9,63,000/- made by the petitioner to the Society was not voluntary. Rather, the letter sent by the petitioner to the Society on July 8, 1992 records that payment by her was gracious contribution towards the Building Maintenance and Repair Fund etc. Moreover, the plea of coercion appears to be an afterthought. As noted above, the payment of Rs.9,63,000/- was made by the petitioner on July 8, 1992 and transfer of shares was effected in favour of the petitioner on July 22, 1992. It was more than two years thereafter that for the first time, the petitioner through her advocate sent a notice to the society on August 11, 1994 and claimed refund and then filed the dispute in the Cooperative Court in October, 1994. In the circumstances, we are of the opinion that payment made by the petitioner to the Society in sum of Rs.9,63,000/- as a contribution towards the Building Maintenance and Repair Fund was voluntary. In view thereof, we do not think that it is

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necessary to go into the question whether the resolution dated February 9, 1996 is illegal being contrary to the Bye-laws of the Society, more so, when there is no direct challenge to the legality and validity of that resolution.

10. In view of the above, the impugned order does not call for any interference and the special leave petition is dismissed.

.....J.
[R.M. LODHA]

NEW DELHI
NOVEMBER 9, 2011

.....J.
[H.L. GOKHALE]