

(1978) 06 BOM CK 0045

Bombay High Court**Case No:** Special Civil Application No. 5588 of 1976

D.K. Mehra

APPELLANT

Vs

N.Y. Fazalbhoy and Others

RESPONDENT

Date of Decision: June 20, 1978**Hon'ble Judges:** V.S. Deshpande, J; M.L. Pendse, J**Bench:** Division Bench**Advocate:** D.K. Jha, for the Appellant; M.M. Sakhardande, for respondent No. 1, V.P. Tipnis and S.K. Swadi, for the Respondent

Judgement

V.S. Deshpande, J.

There is not much substance in this petition under Articles 226 and 227 of the Constitution of India.

2. The respondent Nos. 1 and 2 instituted the present proceedings against the petitioner by raising a dispute before the registrar, Co-operative societies, u/s 91 of the Maharashtra Co-operative Societies Act, 1960. It is alleged in the said dispute that the respondent No. 1 is the holder of the flat, while the respondent No. 2, the co-operative society, is the owner thereof. The petitioner was inducted in the flat held by the respondent No. 1 as a licensee and the petitioner failed to vacate the said flat in spite of the termination of the said license. It was also alleged that the possession and occupation of the flat by the petitioner was in breach of the true intentions of the bye laws and the rules and regulations framed by the respondent No. 2 society which contemplates use of the flat by the holder. Arrears of compensation also was claimed in the dispute. This dispute was raised in 1974. At the late stage of the hearing of the dispute by the Co-operative Court, the petitioner was the defendant in the said case raised the question of jurisdiction contending that a dispute between the licensee and the member of the society was not a dispute covered by section 91 of the Maharashtra Co-operative Societies Act. This objection to the jurisdiction was overruled by the Co-operative Court and also in appeal by the co-operative Tribunal. The validity of this order of the co-operative

Tribunal passed in appeal on 24th September, 1976 is challenged in this Special Civil Application.

3. The point is clearly covered by the two judgments of this Court viz., judgment in the case of Kamale Gobindram v. Badri Prasad Pande, 76 Bombay Law Reporter 704, as also the Unreported Judgment (dated 9th January, 1975, in Special Civil Application No. 1035 of 1972). It is now well settled that where co-operative society happens to be one of the claimants-disputants along with the holder of the flat, the dispute is liable to be covered by section 91 of the Maharashtra Co-operative Societies Act and the question of jurisdiction in that case does not arise. This is what both the courts have held in their concurrent judgments.

4. The rule is accordingly liable to be discharged. Rule discharged with costs.