

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No. 277/2016**

% **19th September, 2016**

SHRI RAM LAL Appellant

Through: Mr. Om Prakash, Advocate.

versus

M/S GAFFAR MKT. BEOPAR MANDAL & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 34272/2016 (delay of 19 days in filing the appeal)

For the reasons stated in the application delay of 19 days in filing the appeal is condoned.

CM stands disposed of.

RSA No. 277/2016 & CM No. 34273/2016 (for direction)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the concurrent Judgments of the courts below; of the Trial Court dated 3.12.2015 of the First Appellate Court dated 29.4.2016; by which the suit filed by the appellant/plaintiff against the

respondent no.1/defendant no.1/M/s Gaffar Market Beopar Mandal for restoration of the cancelled membership of the appellant/plaintiff of the market association/respondent no.1/defendant no.1 has been dismissed.

2. It has been found by the courts below as a matter of fact that the membership to the respondent no.1/market association is governed by the rules of respondent no.1/defendant no.1 which were proved as Ex.DW1/PX2. These rules require that membership of the respondent no.1/defendant no.1 is restricted to a person who is either a tenant or an owner of a shop in the market. Admittedly, the appellant/plaintiff is neither the owner nor a tenant in the shop of Gaffar Market, but it is his wife who is a tenant of a shop. Accordingly, the suit was dismissed because appellant/plaintiff cannot become a member of the respondent no.1/market association on account of requirement of the rules Ex.DW1/PX2. The relevant observations in this regard of the first appellate court are contained in paras 13 to 17 and which read as under:-

13. It is plaintiff/appellant who had come to the court and onus was upon him to establish that he had a right to the membership in question. Ld. Trial Court has rightly observed in the discussion on the issue no.1 and 4 that as per the rules of defendant no.1, duly exhibited as Ex.DW1/PX2, it was mandatory, that to be entitled to be a member of defendant no.1, one must either be an owner, or a tenant of the said shop in the Gaffar Market area.

14. The appellant has averred himself to be a tenant and in possession of shop bearing no. 138-139, Gaffar Market. The relevant extracts of his cross examination, even have been reproduced for an easy reference by Ld. Trial Court.

15. It is seen that the impugned shop bearing no.138-139, Gaffar Market was under the tenancy of the wife of the appellant and not the appellant, and as such same was even admitted by the appellant in his further cross examination

as PW-1, and the relevant extracts are again being reproduced as under:

“...it is correct that Mohan Devi is my wife. It is correct that the receipts of rent are being issued by the mandal in the name of my wife Mohan Devi...

.... It is correct that till date the receipts are being issued in my wife. It is correct that my wife is available in Delhi. I am not the tenant in respect of the above said number of the premises, therefore, there is no question of rent receipt in my name. I am not the member of mandal. I do not have any receipt of defendant no.1 in my house.”

16. Thus, it was, through and through, clear that it was the wife of the appellant and not the appellant who was a tenant in the said shop, and, therefore, the locus standi of the appellant to sue was missing.

17. Ld. counsel for the appellant has failed to address any arguments and to point out to any such rules of the respondent which would indicate that apart from owner or tenant, even an occupant of a shop had the right to membership. No such ground has been raised herein, to warrant interference in the impugned judgment, which is well reasoned and supported by the material on record.” (underlining added)

3. I completely agree with the aforesaid conclusions of the courts below. Once the appellant/plaintiff fails to fulfill the requirement of being a member of private market association, he cannot be granted membership by restoring his cancelled membership.

4. Learned counsel for the appellant/plaintiff argued that in the Resolution of respondent no.1/defendant no.1 dated 31.12.2011 Ex.DW1/P1 the reason given is not of the appellant/plaintiff not being a tenant or owner but on account of appellant/plaintiff having made complaints, however, whatever be the reason for cancellation and the same not being in accordance with rules, however, the fact of the matter is that when membership is sought of an association which is governed by the rules, then the membership can only be

granted in accordance with the rules and not in violation of the rules. Admittedly, the rules require that only that person can be a member of the market association who is either a tenant or an owner of a shop in the market and admittedly the appellant/plaintiff is neither an owner nor a tenant of a shop in the market and hence it is rightly held by the courts below that the plaintiff is not entitled to the membership of the respondent no.1/defendant no.1/market association

5. In view of the above, there is no merit in this Regular Second Appeal and no substantial question of law arises. Dismissed.

SEPTEMBER 19, 2016
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VALMIKI J. MEHTA, J