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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7482 OF 2016

Jagannath B Shetty	...Petitioner
<i>Versus</i>	
New Shalimar Coop Society Ltd	...Respondent

Mr Yahya Goghari, *with Amruta Sawant, i/b Sonal Doshi & Co., for the Petitioner.*
Mr Kirit J Hakani, *with Niyati Hakani, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 8th November 2017

PC:-

1. The Writ Petition is directed against an order of the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No. 285 of 2013. The Appellate Court had before it a judgment and order dated 29th July 2013 by which the Trial Court held that the Court of Small Causes had jurisdiction and decided a preliminary jurisdictional challenge under Section 9A of the Code of Civil Procedure 1908 in those terms. The revision Applicant is the Writ Petitioner.

2. Shortly stated, the petitioner, Shetty, claims that he is a member of the respondent-society. He does not say how. He says that he has a share certificate and he bought the shop in question in

the New Shalimar Cooperative Housing Society Limited from the original builder, the predecessor-in-title of the respondent-society. What is not in dispute is that Shetty came into possession of the shop as a tenant of the builder. Nothing is shown to establish that that tenancy terminated in one or the other of the only two modes of tenancy termination known to our jurisprudence: either a decree of a competent Court or a surrender or relinquishment of the tenancy. What Shetty says is that he “bought” the shop from the builder but he produces no document to show this. That document would necessarily have a provision or recital showing the surrender of tenancy and creation of tenancy in itself. Indeed, this might have implications even from the perspective of the stamp duty payable. Relinquishment or surrender of tenancy are separately chargeable transactions. That document in any case would have to be a registered document. Throughout these proceedings there is not an iota of evidence of this so-called transaction. Membership is also claimed on the basis of an order of the Cooperative Registrar and the share certificate but the society has challenged both of these and the challenge proceedings are pending in this Court. The fact that no interim order has been obtained against Shetty is surely irrelevant. What matters is that the society has at no point accepted the correctness of Shetty’s claim to full membership of the respondent-society.

3. It is on these facts that the Courts below were required to assess the question of jurisdiction. Neither party led evidence before the Trial Court and this surely works to the greater detriment and disadvantage of Shetty than the society. It was here, on the preliminary issue, that Shetty had a full-fledged opportunity to put

before the Court the totality of his evidence including the document that he says exists. To a question from this Court as to where might this document be found, the answer is that it would be produced at the trial. But that surely begs the question because if it is to be produced at the trial then the Court will undoubtedly have jurisdiction. If it is suggested that it will be produced before some Cooperative Court then that necessarily means that the order of the Registrar is vulnerable because it was passed without having the necessary documents before him in the first place. Shetty cannot possibly have it both ways, nor can he take advantage of having squandered an opportunity to place his evidence before the Court.

4. A jurisdictional issue will be decided on the pleadings as they stand and on the material that was before the Trial Court once the issue was framed and parties were given opportunity to lead evidence. The Appellate Court found that from the averments in the plaint it is clear that there was a relationship between the society and the petitioner of landlord and tenant. There was no dispute that Shetty was initially inducted as a tenant and was paying rent. It is Shetty, as the original tenant, who contended that he had subsequently acquired membership or, to put it more succinctly, that his initial tenancy had elevated to full-fledged ownership and membership. The Appellate Court found that there was no proof of this but left the door open to Shetty to show this at the trial by saying that “for now defendant has not adduced independent evidence to substantiate the said contention”. Even before me there is this continued lack of independent evidence to substantiate the contention of ownership.

5. The reliance on the decision of the Supreme Court in *M/s. Anita Enterprises & Anr v Belfer Coop. Housing Society Ltd & Ors*¹ is not apposite. That decision was in the context of whether a member could be considered a tenant of the society. Here the entire question of membership is under a cloud. In any case, the decision was considered by the Appellate Court in paragraph 9. Unlike *Anita Enterprises*'s case, this is a case where the petitioner was admittedly previously a tenant.

6. There is no merit in the Writ Petition. It is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

(G. S. PATEL, J)

1 AIR 2008 SC 746.