

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 625 OF 2015

Mohan Mahavirprasad Shah

..Petitioner

Vs.

Sohan Mahavirprasad Shah and Ors.

..Respondents

....

Mr. Kiran Kulkarni a/w Ms. K. Padmashri, Advocates i/b Kulkarni & Ass. for Petitioner.

Mr. Peter Lobo, Advocate i/b Neha Bhide for Respondents.

....

CORAM : N.M. JAMDAR, J.

DATED : 28 APRIL 2015

ORAL ORDER:

By this petition, the petitioner challenges the order passed by the Appeal Bench of the Small Causes Court, Mumbai, rejecting the revision application filed by the applicant against the order passed by the learned Small Causes Court holding that the suit filed by the Respondent No.1 is maintainable.

2. Respondent No.1, who is brother of the petitioner, has filed R.A.D. Suit No. 1749/2013 in the Small Causes Court, Mumbai. In the plaint, it is averred that the Respondent No.1 is the statutory tenant of the suit premises and the petitioner was allowed to reside as and when he visited as guest and he has no right of

being a tenant. In the suit, it is prayed that the Respondent No.1 be declared as tenant; the landlord should issue rent bill and receipts in the name of the Respondent No.1; injunction be granted against the landlord as well as the petitioner. In this suit, the petitioner took objection to the jurisdiction of the Small Causes Court to hear a suit, which was rejected by the Small Causes Court by order dated 29 March 2014 as well as the order dated 18 September 2014. The revision filed against the order dated 18 September 2014 has been rejected by the Appeal Bench by order dated 20 November 2014.

3. The learned Counsel for the petitioner submitted that the petitioner has filed a civil suit bearing no. 1938/2013 in the City Civil Court, Mumbai in which injunction is already granted in favour of the petitioner. He submits that the suit filed by the Respondent No.1 only for injunction against the petitioner is not maintainable in Small Causes Court.

4. Both the Courts have rightly taken note of the legal position that jurisdiction will have to be determined from the averments in the plaint. The Respondent No.1 clearly asserted the claim as a tenant and has also stated that the petitioner is not a tenant. Determination of such issues falls within the jurisdiction of Small Causes Court. There is no error in the view taken by both the Courts below.

5. The apprehension of the petitioner that in the present suit, contradictory injunction order may be passed against the petitioner does not arise for consideration. The present petition arises only from issue of jurisdiction of the Court to decide the suit and not what would be the outcome on merits. Needless to clarify that if any application for injunction is taken out by the Respondent No.1, it will be considered on its own merits and all parties will be entitled to urge submissions on merits.

6. The Writ Petition is rejected, with above clarification.

(N.M. JAMDAR, J.)