

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 342 OF 2008

Smt. Hirabai Pandurang Satav

Age : 60 yrs, Occ : Household

R/at : Bhosale Palace,
4th Floor, Near Bhosale Garden
Hadapsar, Pune

.....Appellant
(Orig. Defendant)

V/S.

Mr. Ashok Shivajirao Gaikwad

Age : 50 years, Occ : Business

R/at : 23/1/2, Dangmali Ali,
Bhosale Wada, Hadapsargaon,
Pune

.....Respondent
(Orig. Plaintiff)

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Mr. S.S. Patwardhan i/by. Mr. Rajesh More, Advocate for the applicant.

Ms. Rachana Chavan, Advocate for the respondent.

ALONGWITH

CIVIL REVISION APPLICATION NO. 24 OF 2009

M/s. Sai Satguru Developers
a partnership firm registered under the
provisions of Indian Partnership Act,
having address at 201, Nirmal Sagar,
Near Aaswad Hotel, L.J. Road, Shivaji
Park, Dadar, Mumbai-400 28

.....Applicant

V/s.

Fatehchand Jain

.....Respondent

An adult of Indian Inhabitant

aged about ___years, occ. Retired.

Having address at Ground Floor, STB
Ratanlal Mahal, Plot No.193, L.J. Road,
Mahim, Mumbai-400 016

also having address at Jarina Nivas, F-1.

Pandit Guni Das Marg, Near Shitla Devi
Temple, L.J. Road, Mahim, Mumbai-400 016.

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Mr. P.G. Karande, Advocate for the applicant.

Ms. Rachana Chavan, h/f. Mr. P.G. Lad, Advocate for the respondent

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CORAM :- SMT. R.P. SONDURBALDOTA, J.

JUDG. RESERVED ON :-25th JULY, 2014.

JUDG. PRONOUNCED ON :- 22nd JANUARY, 2015.

JUDGMENT :-

1). The common question of law arising for consideration in the above two Revision Applications is, “Whether the Civil Court has jurisdiction to entertain and try suit for possession filed under Section 6 of the Specific Relief Act, where the parties to the suit are either landlord/tenant or licensor/licensee or lessor/lessee.” The first Revision Application arises out of final decree which directs the licensor to handover possession to the licensee. The second Revision Application arises from the order deciding preliminary issue of jurisdiction in a suit by the tenant against the landlord. The Courts have held that the suits filed, being under Section 6 of the Specific Relief Act, the legal relationship between the parties was not relevant.

2). Mr. Patwardhan, the learned Advocate for the applicant in the first Revision Application, submits that, in view of the relationship of licensor and licensee between the parties, the provision of Section 26 of the Bombay Provincial Small Causes Court's Act is attracted to the suit and

the Civil Court has no jurisdiction to entertain and try it.

3). Mr. Karande, the learned Advocate appearing for the applicant in the second Revision Application submits that, the admitted relationship of landlord and tenant between the parties will take the suit for possession outside the purview of the Civil Court and that it must be tried by the Court of Small Causes, which has exclusive jurisdiction in view of Section 33 of the Maharashtra Rent Control Act, 1999.

4). The learned Advocates for the revision applicants and Ms. Chavan on behalf of the respondents, have cited several decisions of different Courts in support of their respective considerations, which decisions will be duly considered hereinafter.

5). The two provisions of law relied upon by the learned advocates are reproduced below.

Section 33 of the Maharashtra Rent Control Act, 1999 :

33. Jurisdiction of Courts-

(1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason, the amount of claim or for any other reason, the suit or proceedings would not, but for this provision, be within its jurisdiction.

(a). In Brihan Mumbai, the Court of Small Causes, Mumbai.

(b) In any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such court, and

(c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority) and subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

(2)(a). Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b). where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause(a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.”

Section 26 of the Bombay Provincial Small Causes Court's Act :

“26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.

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(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply.”

6). There is no doubt as regards the established legal position in view of the above two provisions, that suit relating to possession of the licensed/demised premises falls within the exclusive jurisdiction of the Court of Small Causes. The distinguishing feature herein, however, is that the suits filed are not to enforce the legal rights of the plaintiffs to possess the premises in question but for redressal of a grievance of the

illegal act committed by the defendants of using force to evict the plaintiffs from the premises. The real issue, therefore is of the scope of Section 6 of the Specific Reliefs Act.

7). The provision of Section 6 of the Specific Reliefs Act reads as under :-

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

8). None of the decisions cited on behalf of the revision applicants directly deal with the question arising herein for consideration. The decisions decide the question of jurisdiction of the Court of Small Causes under various other circumstances. The learned Advocates for the

petitioner have sought to argue parity between those circumstances and the special circumstance in the present cases. Therefore, the facts giving rise to the proceedings in the decisions cited, need to be specifically noted.

9). The first decision cited by Mr. Patwardhan, is of the Apex Court in **Natraj Studios (P) Ltd. Versus. Navrang Studios and Another, reported in (1981) 1 Supreme Court Cases page 523.** In this case, the relationship between the parties was of licensor and licensee. The “leave and license agreement” between them contained a clause for arbitration. The licensor had terminated the agreement and called upon the licensee to handover possession of the licensed premises. Thereupon, the licensee filed a suit in the Court of Small Causes for a declaration that, he was the monthly tenant of the licensed premises. He also filed an application under Section 33 of the Arbitration Act in this Court for a declaration that the arbitration clause in the “leave and license agreement” was invalid, inoperative etc. That application was dismissed by this Court and the appeal therefrom was dismissed by the Division Bench. The licensor filed an application under Section 8 of the Arbitration Act for appointment of an arbitrator to decide the disputes and differences between the parties under the leave and license agreement. This Court allowed the application and appointed an arbitrator. All the orders of

this Court came to be challenged before the Apex Court and the Apex Court was required to consider jurisdiction of the Court of Small Causes to decide the disputes relating to possession of the licensed premises in the circumstance of existence of an arbitration clause in the leave and license agreement. Putting it differently, the Apex Court considered whether the arbitrator could decide such dispute. It had been contended before the Apex Court that the essence of the disputes between the parties was the right to possession of the licensed premises and the status of the licensee as that of a deemed tenant, which disputes can be resolved only by the Court of Small Causes and jurisdiction of every other Court including that of the Arbitrator was excluded.

10). On consideration of the rival submissions, the Apex Court held that, the relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed- demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties. Mr. Patwardhan, specifically relies upon para-16 and 17 of the judgment to emphasize the special jurisdiction of the Small Causes Court. The same read as follows :-

“16. We may now proceed to consider the submission

that the Court of Small Causes alone has exclusive jurisdiction to resolve the dispute between the parties. S. 28(1) of the Bombay Rent Act, positively confers jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of licence fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions, and negatively it excludes the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question.”

“17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law.”

The decision and the observation therein would be relevant to the disputes relating to enforcement of right as a landlord/licensor and tenant/licensee. There is nothing in the judgment to indicate that it would also apply to dispute that do not enforce such a right. Therefore, the decision is not attracted to the case on hand.

11) The second decision cited by Mr Patwardhan is of the Division Bench of this Court in **Syndicate Bank Vs. East India Hotels Ltd., Bombay reported in 2005(2) Mh.L.J. page 363**. In the facts of this case a suit filed u/s 6 of the Specific Relief Act by a licensee against the licensor was decreed by this Court and the challenge to that decree had failed. The licensor then filed a suit in this Court claiming that, having handed over possession the licensee had no right to the premises and the licensor was in possession as a true owner exclusively entitled to it. As a consequential relief he sought a declaration that the decree passed under Section 6(1) of the Specific Reliefs Act, in so far as, it directed handing over of the possession was inoperative and incapable of execution. The licensee raised the plea of jurisdiction and contended that in view of Section 41 of the Presidency of Small Causes Court Act, this Court has no jurisdiction to entertain and try the suit. Thereupon a preliminary issue of jurisdiction was framed. The learned Single Judge answered it in favour of the licensor and held that Section 41 of the Presidency Small Causes Court Act was not applicable to the suit. Being aggrieved by the order, the licensee carried it to the Division Bench by way of Letters Patent Appeal. After hearing the extensive arguments on the question of jurisdiction, the Division Bench confirmed the decision of the Single Judge with following observations :-

“44. The jurisdiction of the Court to entertain a suit is to be determined on the basis of the averments made in the plaint. As noticed above, in the present case the principle relief claimed in the suit is that having handed over possession the defendant has no right to the said area and the plaintiff in possession of the said area as a true owner is exclusively entitled to it. As a consequential relief, the plaintiff has sought a declaration that the decree passed under 6(1) in so far as it directs the plaintiff to hand over possession of the said area to the defendant is inoperative and incapable of execution. As a historical background the plaintiff has narrated that initially there was a relationship of licensor and licensee between the plaintiff and the defendant and that on expiry of the licence there were disputes between the parties, but, ultimately the defendant has handed over possession of the said area to the plaintiff. The reliefs claimed in the suit are not based on these facts but are based on the fact that the defendant has handed over possession and the plaintiff in possession is entitled to a declaration that the defendant has no right whatsoever to the said area and the plaintiff as a true owner is exclusively entitled to it.”

“45.The case of the defendant is that there was a relationship of licensor and licensee between the plaintiff and the defendant and in view of the decree for possession passed in favour of the defendant in 6(1) suit, the present suit filed under 6(4) in substance relates to recovery of possession and, therefore, as per Section 41 of the Presidency Small Cause

Courts Act, such a suit is maintainable only in Court Act, such a suit is maintainable only in the Court of Small Causes at Bombay does not merit acceptance. As stated earlier, reference to the past relationship licensor and licensee between the plaintiff and the defendant in the plaint is only as a historical background and not with a view to get any relief in the suit on that basis, it is not the case of the plaintiff that on expiry of licence the right of the defendant get extinguished and therefore, the plaintiff as true owner is entitled to the premises the specific case of the plaintiff is that upon handing over possession the defendant has no right to the said area and the plaintiff who is in actual physical possession is exclusively entitled to the said area as a true owner and, therefore, the decree passed under 6(1) of the Specific Relief Act be held to be inoperative and not executable. Such a suit, in our opinion, is maintainable and cannot be said to be a suit relating to recovery of possession within the meaning of Section 41 of the Presidency Small Cause Courts Act.”

The decision cited, if anything, would support the respondents. The suit filed by the licensor was on title. He claimed to be entitled to occupy the premises as a true owner and not as a licensor. Since the right sought to be enforced was not the one covered by Section 41 of the Presidency Small Causes Courts Act, the bar thereunder was held to be not attracted. The suits herein would stand on a much better footing. They are not

filed to enforce any right to the premises in question. They are for exercise of a right invested in a person, a right that his possession can be disturbed only by following due process of law. Section 6(1) of the Specific Relief Act, provides for infringement of that right.

12). Mr. Karande, has also relied upon three decisions, in support of his arguments, two of the Apex Court and one of Division Bench of this Court. They are as follows :-

- (i) **Mansukhlal Dhanraj Jain and others V. Eknath Vithal Ogale, reported in AIR 1955 Supreme Court page 1102.**
- (ii) **Babulal Bhuramal and another v. Nandram Shivram and Others, reported in A.I.R. 1958 S.C. page 677 (V 45 C 90).**
- (iii) **Tejbai Teishi Dedhia and Others V. Central Bank of India and Others, reported in 2007 (5) Mh.L.J. page 869.**

13. The decision of the Apex Court in *Manshukhlal Jain* case interprets the phrase “relating to recovery of possession” in Section 41 of the Presidency Small Causes Courts Act. It held that the phrase is comprehensive in nature. It covers suit for injunction for restraining licensor from effecting forcible recovery of possession from licensee and therefore such suit would lie within the exclusive jurisdiction of the Small Causes Court and not the Civil Court. Mr. Karande, argues that

the source of filing suit for injunction, simplicitor, to restrain the defendant from forcibly dispossessing the plaintiff is Section 6 of the Specific Relief Act. Therefore, if it has been held by the Apex Court that Section 41(1) of the Presidency Small Cause Courts Act is applicable to such suit for preventive action, it must also be extended to the suit for possession filed under Section 6 of Specific Relief Act. In my opinion, there is no merit in the submission because for maintaining a suit for injunction, simplicitor, for protection of possession against forcible eviction, the plaintiff has to necessarily plead and establish his right to occupy the suit premises. In that case, the suit for injunction would be covered by the phrase 'relating to recovery of possession" in Section 41(1) of the Presidency Small Causes Court Act. The suit for possession filed under Section 6 of the Specific Relief Act, however, stands on a different footing. The very provision of Section 6 dispenses with the establishment of right to occupy the premises and the plaintiff is required to establish only the actual possession of the premises. It is a well established position that, Section 6 of The Specific Relief Act is a Code by itself. It provides for filing of such suit, limitation for filing the suit, bar to such suit against the Government and also bar of appeal and review from the decree passed in any suit instituted under the section.

14). The second decision of the Apex Court in *Babulal Bhuramal*

(supra), relied upon by Mr. Karande arose out of suit for a declaration of tenancy and sub-tenancy. The Apex Court observed that it was a manifest from the assertion in the plaint and the nature of the relief asked, for that the plaintiffs based their case on the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 ("Bombay Rent Act" for short). According to the plaintiffs, the Bombay Rent Act gave the first plaintiff protection and the second and third plaintiffs were entitled to remain in possession as the sub-tenants of the first plaintiff. The decision therefore clearly has no application to the facts of the present case.

15). In *Tejbai* case relied upon by Mr. Karande, tenant had filed suit in Civil Court for enforcement of agreement with the landlord under which the tenant had agreed to vacate the demised premises to enable the landlord to construct a new building subject to continuation of existing relationship to the premises in the new building. It was held by the Division Bench of this Court that the suit was not maintainable in Civil Court in view of Section 28 of the Bombay Rent Act. This decision is obviously not attracted to the facts of the present case.

16). In *Syndicate Bank* case (supra) before the Division Bench, two more decisions of this Court, also of Division Bench, in connection with jurisdiction of Civil Court in entertaining suit under section 6(1) of

Specific Relief Act where parties to the suit are landlord/tenant or licensor/licensee had been relied upon by the licensor. Though the decisions do not support the contention of the applicants, Mr. Patwardhan in clear exhibition of his inherent fairness, has tendered copies thereof. Ms. Rachana Chavan, the learned Advocate appearing for the respondents, relies upon the same. The two decisions are :-

(i). **Shiavax C. Cambata and another v. Sunderdas Ebji, reported in [1951] Indian Law Reports, Bombay Series page 145.**

(ii) **Smt. Faijulbee Hajeel v. Yadali Amir Shaikh, reported in AIR 1984 Bombay 290.**

17). In *Shiavax Cambata* case (supra), the Division Bench was considering applicability of Sections 28 and 50 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act (Bom. LVII of 1947) to suit filed under Section 9 of the Specific Relief Act, 1877 (Old Act). Section 9 of the Old Act, corresponds to Section 6 of the present Act. The Apex Court held that, such a suit does not fall under Section 28 of the Bombay Rent Act. The reasons stated therefor in the judgment read as follows :-

“ The suit is a simple suit under S. 9, Specific Relief Act. That section gives a special remedy to a party who has been dispossessed to file a suit for possession. The

suit has to be filed within six months from the date of dispossession and in that suit no question as to the title of the plaintiff or the defendant can arise. Such suit does not bar any person from suing to establish his title to such property and to recover possession thereof. It is, therefore, a summary remedy given to a dispossessed person to obtain possession of the property of which he has been dispossessed. Once the nature of the suit under S. 9 is understood, it will be clear that such a suit would not fall within the description of the suit mentioned in S. 28 of the Act. The object of S. 9 is to protect possession without regard to the title or the origin of possession.”

“ . It is only those suits for possession which are filed between a landlord and a tenant. In our opinion, it is only when a landlord or a tenant files a suit for possession as a landlord or a tenant and in his capacity as a landlord or a tenant and relying on his title as a landlord or a tenant that it becomes a suit of the description mentioned in S. 50 and S. 28 of the Act. Although the plaintiff might have set out his title in the plaint, those averments were entirely unnecessary and irrelevant. It is clear that the defendants could not have raised an issue as to the plaintiff's title in the suit. He could not have contested the position that the plaintiff was not entitled to possession because he was not a tenant. He could only have contested the plaintiff's claim on the one simple and short ground, viz., that the

plaintiff was not in possession within six months of the filing of the suit. Therefore, the issue as to landlord and tenant could never have arisen in this suit.”

18). Identical question had been raised in *Faijulbee* case (supra), where it was contended that suit filed under Section 6 of the Specific Relief Act, between landlord/tenant or licensor/licensee would lie in the Small Causes Court in view of Section 41 of Presidency Small Causes Courts Act. The issue was freshly considered by the Division Bench in view of largescale amendment to Chapter-VII of Small Causes Courts Act. The Division Bench rejected the argument that, the embargo contained in Section 41 of Small Causes Courts Act was such that it precluded acceptance of the view expressed in *Shiavax Cambatta* case. It held that the law laid down in *Shiavax Cambatta* case is still valid law despite the amendment contained in Chapter-VII of Small Cause Courts Act and the suit filed under Section 6 of Specific Relief Act for recovery of possession, based on the allegation of dispossession, continues to be within the jurisdiction of the Civil Court despite the fact that the parties may happen to be fulfilling the character of a landlord or a tenant or a licensor or a licensee. The question of title of the parties including the title of a tenant does not arise in such a case and will naturally be not

decided in the suit.

19). The above two decisions have been referred to in the *Syndicate Bank* case only by way of part of the submissions advanced before the Court. There is no discussion on the ratio decidendi from the two decisions. This is obviously because the Court was deciding not the suit filed by the licensee for recovery of possession against the licensor which had been decreed but was considering only the subsequent suit filed by the licensor under Section 6(4) of the Specific Relief Act. Nonetheless, the statement of law in *Shiavax Cambatta* case which is reiterated in *Faijulbee* case was indirectly approved in *Syndicate Bank* case. The statement of law that the suit for recovery of possession under Section 6 of the Specific Relief Act between the licensor/licensee or landlord/tenant can be entertained in a Civil Court holds good till date. In such suit, the plaintiff has to merely plead and establish his possession of the premises. The very provision of Section 6 dispenses with establishment of right to occupy the premises. Therefore, any averment made in the plaint as regards the relationship of landlord/tenant or licensor/licensee would be only by way of narration of the history of the fact of possession. The averments are unnecessary and irrelevant for deciding the suit.

20). For the reasons stated above, the orders impugned in the

Revision Applications do not suffer from any jurisdictional error.

Hence, the Revisions Applications are dismissed.

21). On the request of the Advocates for the applicants, the ad-interim order is extended by a period of 6 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)