

Sequeira

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

WRIT PETITION NO. 4719 OF 2014.

Reena Sanjay Minz.

.. Petitioner

Vs.

Dilip Umiyashankar Joshi & ors.

.. Respondents

Mr.Bhavesb Parmar i/b Mr.Devmani Shukla and Mr.Vijayprakash Yadav, for the Petitioner.

Mr.Rajiv Deokar i/b Mr.Manmohan Sharma, for Respondent No.1.

***CORAM: N.M.Jamdar, J.
Wednesday 25 March, 2015***

Oral Order :

By this Writ petition, the Petitioner challenges the Judgment and Order dated 7 March 2014 passed by the appellate bench of Small Causes Court Mumbai, dismissing the Revision Application No.68 of 2014 filed by the Petitioner against the order dated 18 January 2014 passed by the learned Judge, Small Causes Court holding that it has jurisdiction to consider the R.A.D. Suit No.84 of 2012.

2 It is the case of the Respondent No.1 (Plaintiff) that the Respondent No.1 along with his father was the tenant of the premises and one Nitin Madhavji Rangwalla was the landlord of the premises who collected rent of the suit premises and issued rent

receipts to father of Plaintiff. It is the case of the Plaintiff that her father was member of New Mars English School, which was a tenant of the premises. It is claimed by Plaintiff that after the closure of the school, her father resided in the suit premises along with his family and also the plaintiff. It is further the case of the Plaintiff that despite of this position, letters were addressed by the Petitioner threatening the Plaintiff from entering the premises. The Plaintiff claimed to be lawful tenant of the suit premises and called upon the Petitioner to issue rent receipts to them. It is further case of the Plaintiff that the Petitioner avoided to make the Respondent No.1 as a tenant and instead issued notices. According to the Plaintiff, he was a tenant of the Petitioner and since the Petitioner was not recognising this fact, he was constrained to file a suit. On these averments, the Respondent No.1 filed a suit in the Small Causes Court Mumbai, for declaration that Respondent No.1 is lawful tenant of the suit premises and the Petitioner be directed to issue him the rent receipts.

3 In this suit Written statement came to be filed by the Defendants. It was contended that the Respondent No.1 is not the tenant of the suit premises and the contentions raised in the plaint were denied.

4 The Respondent No.1 took out an application for interim relief in the suit. The Petitioner called upon Small Causes Court to frame the issue as regards maintainability of the suit. Accordingly on 9 October 2013, preliminary issue as regards maintainability of

the suit and whether the suit is with limitation, was framed. Respondent No.1 filed pursis that he does not wish to lead any evidence in the application filed by the Petitioner on the issue of jurisdiction. The Petitioner also filed a pursis stating that Court has directed the Petitioner to file evidence however, Petitioner will not file affidavit of evidence.

5 The learned Judge, Small Causes Court, noted the fact that both the parties had stated that they would not lead evidence, proceeded to consider the averments in the plaint as regards issue of jurisdiction and limitation. On the issue of jurisdiction the learned Judge held that the averments in the plaint clearly show that the Respondent No.1 was claiming tenancy treating Petitioner as a landlord, and therefore, under Section 33 of the Maharashtra Rent Control Act 1999, the Court would have jurisdiction to decide the suit. As regards limitation, the learned Judge held that except for raising this point, the Petitioner did not establish how the suit was not in limitation. Furthermore, the learned Judge held that Petitioner had issued a notice in September 2011 and November 2011 and therefore, suit filed on 6 January 2012 was within limitation. Accordingly by order dated 18 January 2014, the learned Judge, Small Causes Court rejected the application filed by the Petitioner.

6 The Petitioner thereafter filed a revision application before the appellate bench of Small Causes Court, Mumbai. The appellate bench held that the Revision was not maintainable and even

otherwise, since the parties had agreed that no evidence will be led, the learned Judge, Small Causes Court was right in considering the averments in the plaint and accordingly dismissed the Revision application by order dated 7 March 2014.

7 The learned counsel for the Petitioner, Mr Bhavesh Parmar, relying upon the decision of this Court in the case of **Mani Seervai Vs Tulsibai Hiranand Acchipalia And Ors.** reported in 2006 (2) *Mh.L.J* 61 and **Meher Singh Vs Deepak Sawhny and another** reported in 1998 (3)*Mh.L.J.*940 submitted that, both the Courts have not considered the scope of section 9A of the Code of Civil Procedure, and the area of adjudication under the said provisions. He submitted that once the issue of jurisdiction is raised, the Court is duty bound to decide the issue in detail as it is conclusive between the parties and for that purpose evidence is necessary to be led. Mr.Parmar, submitted that because the Plaintiff had not led evidence the Petitioner did not lead evidence and the primary obligation on the Plaintiff to lead evidence to show that the Court had jurisdiction is not taken away merely because the Petitioner did not lead evidence.

8 In the present case, perusal of the plaint clearly shows that what was asserted by the Respondent No.1 was tenancy rights as against the Petitioner. There are no other conflicting averments in the plaint and the case of tenancy is consistently put up. As regards the contention of Mr.Parmar, that the Court was duty bound to consider the evidence, the pursis filed by the Petitioner needs to be

noticed. It is open to the parties to agree that preliminary issue should be decided on the basis of documents on record and it is open for them to agree not to lead any evidence. None of the decisions relied upon by Mr.Parmar deal with the contingency where the parties had agreed not to lead evidence. The learned appellate bench has taken note of this facet of the matter and has rightly distinguished the decisions cited by the Petitioner. Once parties agreed not to lead evidence then there was no question of Court being under an obligation and the learned Judge Small Causes Court, was justified in looking at the averments in the plaint.

9 It is contended by Mr.Parmar that the Petitioner did not lead evidence because the Plaintiff did not lead evidence and Petitioner is under no obligation to lead evidence. However, the pursis filed by the Petitioner does not state this as a reason for not leading evidence. Merely because the pursis was filed subsequent to the pursis filed by the Respondent No.1 cannot be presumed that, that was the reason. Both the Courts have construed the pursis filed by the Petitioner as taking a stand that the Petitioner does not want to lead evidence independently of the reason that the Plaintiff chose not to lead evidence. Both the Courts have construed the pursis filed by both the parties that they had agreed not to lead evidence and get the issues decided on the basis of record available. This interpretation put by both the Courts on the pursis is a possible view of the matter.

10 Perusal of the plaint shows that the pleadings are adequate to hold that the Small Causes Court has jurisdiction. No interference is warranted in the impugned orders. The Writ Petition is accordingly rejected.

(N.M.Jamdar, J.)