

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6530 OF 2014

Vishwanath Gyanba Chorge.] ... Petitioner

Versus

White Flower Properties Pvt. Ltd.] ... Respondents

Mr. Sharadkumar R. Matkar for the Petitioner.

Mr. Karl Tamboly a/w. Hetal Thakore, and Ms. Mansi Patel i/b
Thakore Jariwala & Associates for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 30, 2015

P. C. :-

1. Heard the learned Counsel for parties.

2. The Petitioner is the Plaintiff in RAD Suit No.1120 of 2012 filed before the Small Causes Court at Mumbai in which the Petitioner has prayed for a declaration that he is a tenant in respect of one commercial structure admeasuring 8 x 15 sq. ft. length carpet area along with open space on the backside of the structure admeasuring about 105 sq.ft., and for consequential reliefs.

3. The Respondent is the Defendant in the above RAD Suit No.1120 of 2012. The Petitioner had taken out an application for interim injunction / reliefs in RAD Suit No.1120 of 2012. The Respondent in its Affidavit in Reply to the interim application raised a preliminary objection to the jurisdiction of the Trial Court to try the suit on the ground that the Petitioner is a trespasser, and not a tenant, in respect of the open space admeasuring 105 sq.ft. In view of the preliminary objection raised by the Respondent, a preliminary issue came to be framed by the Trial Court under Section 9 (A) of the Code of Civil Procedure, 1908 as to whether it has jurisdiction to try and dispose off RAD Suit No. 1120 of 2012. After hearing both sides, the Trial Court by its Order dated 12th July 2013 disposed of the preliminary issue and held that it has jurisdiction to try and hear the suit.

4. Being aggrieved by the aforesaid order, the Respondent filed Revision Application No.226 of 2013 challenging the order of the Trial Court. A two Judge Bench of the Small Causes Court at Mumbai by an order dated 19th March 2014 allowed Revision Application No.226 of 2013 and reversed the Order passed by the Trial Court. It was held that the Trial Court did not have jurisdiction to hear the RAD Suit No.1120 of 2012 and the suit was accordingly dismissed.

5. It is the above Order dated 19th March 2014, which is impugned in the present Writ Petition. This Petition was admitted by an order dated 6th August 2015. On that day, the Advocates for the

Petitioner had pointed out that the Respondent herein has filed T.E. Suit No.114 of 2013 before the Small Causes Court at Mumbai for eviction of the Petitioner from the above structure admeasuring 8 x 15 sq.ft. As and by way of interim reliefs in the present Writ Petition, it was directed by the Order dated 6th August 2015 that the proceedings in T.E. Suit No.114 of 2013 shall go on, however, the Trial Court shall not make any final order in that Suit without leave of this Court.

6. This is where the matter stands today. The Counsel on behalf of the Respondent has made a suggestion in across the bar in terms of what is recorded below. As per his suggestion both the above suits pending before the Small Causes Court at Mumbai can be disposed of on merits, and in an expeditious manner. Counsel for the Petitioner agrees to the suggestion made by the Counsel for the Respondent. Accordingly, by consent of both the sides, the following order is passed :-

- (i) The Affidavit in Reply to the Interim Application taken out by the Petitioner in RAD Suit No.1120 of 2012 for interim injunction shall be read as if no preliminary objection to the jurisdiction of the Trial Court has been raised therein. In view of the same, no preliminary issue arises in RAD Suit no. 1120 of 2012. Accordingly, the orders dated 12th July 2013 passed by the Trial Court, and the order dated 19th March 2014 passed in Revision Application No. 226 of 2013 are set aside. The RAD Suit No.1120 of 2012 is therefore restored.

- (ii) The above shall not mean that the Respondent has given up its challenge to the jurisdiction of the Trial Court, or its plea that the Respondent is not a tenant in respect of the open space admeasuring 105 square feet.
- (iii) Both parties agree that the issue of jurisdiction raised by the Respondent shall be treated as an issue in the suit, and the same shall be decided at the final hearing of the suit along with all other issues. The Trial Court is directed to frame the issue of jurisdiction along with the other issues in the suit.
- (iv) The Principal Judge, Small Causes Court, to nominate any one Judge to try and dispose of RAD Suit No.1120 of 2012 and T.E. Suit No.114 of 2013 since the same are presently pending before the two different Judges. Such nomination/assignment to be made within a period of four weeks from today. The Judge to whom both these cases are assigned, to dispose of the same as expeditiously as possible and in any case, within a period of one year from today.

7. It is made clear that this Court has not examined the merits of the matter and therefore all contentions of all parties are left open to be decided by the Small Causes Court. RAD Suit No.1120 of 2012 is therefore restored.

8. Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

9. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)