

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1460 OF 1998

Shri Ganpatbhai alias Gunvantbhai Hariram	]	
Joshi (Since Deceased) Through his heirs	]	
and legal representatives :	]	
1. Smt. Bhagwati Ganpatbhai Joshi (Wife) &	]	
2. Shri Chirag Ganpatbhai Joshi (Son).	]	... Petitioners

Versus

Shri Pravin Thakkar.	]	... Respondent
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Mr. Rajesh S. Patil for Petitioners.

Mr. Tushar Dahibawkar i/b M/s. Dahibawkar & Co. for Respondent.

CORAM :- M. S. SONAK, J.

Judgment Reserved on :- SEPTEMBER 02, 2015
Judgment Pronounced on :- SEPTEMBER 16, 2015

JUDGMENT :-

1. This petition challenges the Judgment and Order dated 08/12/1997 made by the Division Bench of the Small Causes Court (Appeal Court) in Appeal No.237 of 1996 (impugned order). By this impugned order, the Appeal Court has reversed the Judgment and Decree dated 04/03/1996 made by the Small Causes Court (Trial Court) in L.E. & C. Suit No.231/320 of 1980. The Trial Court had, in

effect, partly decreed the suit and directed the Respondent to deliver the vacant possession of the *licensed premises* admeasuring 11' X 18', forming a part of the suit premises. The reference to the terms '*Petitioners*' or '*Respondent*' are to be construed as reference to their respective predecessor-in-title wherever the context so requires.

2. The suit was initially instituted by Ravishankar Joshi, who was himself a tenant in respect of 3 rooms situated at 187/189, Khetwadi Back Road, Bombay – 400 004, since June 1938 ('suit premises'). Ravishankar Joshi used to reside in one of the rooms and conduct a school in the remaining two rooms up to 31/05/1959. Due to some order made by the Education Committee, the school had to be closed down. Ravishankar Joshi, having no other source of income, under the agreement dated 01/07/1977, permitted M/s. Atmaram Satguru & Co. to use portion of the central hall of the suit premises admeasuring 11' X 18' for a limited period of 5 months against payment of compensation of Rs.300/- per month. On the same date, it is the case of Ravishankar Joshi that oral permission was granted to Respondent to use the other part of the central hall, admeasuring 11' X 18' against monthly compensation of Rs.300/- per month for residential purposes (*licensed premises*). At the request of M/s. Atmaram Satguru & Co., the term of license was extended by 5 months. In the meanwhile, the Education Committee permitted recommencement of the school. Therefore, notices were issued to M/s. Atmaram Satguru & Co. as also the Respondent to vacate the central hall, so that the school could commence through the two

rooms, as was the position earlier. M/s. Atmaram Satguru & Co. vacated the portion of 11' X 18' in their occupation, however, the Respondent refused to vacate the *licensed premises*. Instead, the Respondent, broke open the lock of the portion vacated by M/s. Atmaram Satguru & Co. and took forcible possession of the said portion as well. Further, the entire central hall i.e. the *licensed premises* as well as the portion of which forcible possession was taken, was converted to commercial user. In these circumstances, and based upon such allegation, Ganpatbhai Joshi instituted L.E. & C. Suit No.231/320 of 1980. Upon his demise, the suit is pursued by his legal representatives.

3. The Trial Court, by Judgment and Decree dated 04/03/1996, has partly decreed the suit, in the following terms :-

“Suit is partly decreed as under :-

The defendant shall deliver vacant possession of the originally licensed premises of 11' X 18' portion out of the suit premise, within three months.

The defendant shall pay arrears of compensation at the rate of Rs.300/- per month from 1st August, 1979 till the filing of the suit an shall also pay mesne profits at the same rate of Rs.300/- per month from the date of the suit till the delivery of possession of the licensed premises of 11' X 18' to the plaintiff.

The amount if any, deposited in Court shall be adjusted towards the arrears of rent and mesne profit

from 1st August, 1979, till the plaintiff received possession.

The suit is dismissed for the rest of the suit claims.

No order as to costs.”

4. The Appeal Court, however, by impugned order dated 08/12/1997, has set aside the Judgment and Decree dated 04/03/1996 and dismissed the suit. Hence the present petition.

5. Mr. Rajesh Patil, learned Counsel for Petitioners, made the following submissions in support of the petition :-

- (a) That the suit, as instituted, was clearly maintainable under Section 41 of the Presidency Small Cause Court Act, 1882 ('PSCCA'), inasmuch as, the suit was between the licensor and the licensee and the same related to recovery of possession of immovable property situated in Greater Bombay.
- (b) In any case, and without prejudice, the suit, as instituted, was clearly maintainable insofar as the licensed premises are concerned. There was no dispute that the licensed premises admeasuring 11' X 18' had indeed been licensed to the Respondent, although it was a case of the Respondent that the entire central hall had been licensed to him. In these circumstances, the Appeal Court, completely exceeded jurisdiction in reversing the decree made by the Trial Court in respect of the part of the suit

premises.

- (c) The Appeal Court has exceeded its jurisdiction in observing that there was some dispute in relation to identification of the licensed premises is concerned. From the pleadings of the parties as well as the evidence led, there was no dispute whatsoever. Accordingly, there was no ground whatsoever to reverse the decree made by the Trial Court, at least in respect of the *licensed premises*.

6. Mr. Tushar Dahibawkar, learned Counsel for Respondent, defended the impugned order. He submitted that since the Petitioners had themselves alleged that portion of the central hall, other than the *licensed premises*, were trespassed upon by the Respondent, there was no relationship of licensor and licensee as between the Petitioners and the Respondent. In the absence of such a jurisdictional fact, the provisions of Section 41 of the PSCCA, were not at all attracted and the suit, as instituted, was rightly held to be not maintainable by the Appeal Court. In any case, Mr. Dahibawkar submitted that there was a serious issue of identification of the *licensed premises*. The Petitioners failed to either plead or establish the precise extent of the *licensed premises*. In such circumstances, even if any decree were to be made, the same would be clearly inexecutable. The Appeal Court has rightly declined to make an inexecutable decree and there is no jurisdictional error whatsoever in the impugned order.

7. Both the learned Counsel made reference to certain decisions in the context of scope and import of Section 41 of the PSSCA in respect of their respective submissions. The same shall be referred to in the course of this Judgment and Order.

8. The rival contentions now fall for my determination.

9. Normally, at least to begin with, since the pleadings in the plaint determine the jurisdiction of the Court, it is necessary to make reference to certain relevant pleadings in the plaint. In para nos.2 and 3 of the plaint, Joshi has made specific reference to portion of the central hall admeasuring 11' X 18' being licenced to the Respondent. This part makes reference to sketch plan indicating the portion which was granted to M/s. Atmaram Satguru & Co. and the portion granted to the Respondent. There is some dispute as to whether such plan was proved in the course of evidence. However, the pleading in para 3 of the plaint clearly suggests that half the portion of the central hall admeasuring 11' X 18' was licensed to M/s. Atmaram Satguru & Co. and the balance half again naturally admeasuring 11' X 18' was licensed to the Respondent. There is thus, no ambiguity as such insofar as identification of the *licensed premises* is concerned. In para 4, the Petitioners have pleaded that after M/s. Atmaram Satguru & Co. vacated the portion licensed to them, the Respondent broke open the lock put up on the said portion and forcibly took possession of the portion vacated by M/s. Atmaram Satguru & Co. In para 6 of the plaint, the Petitioners have averred that the Respondent is neither the

lessee nor the licensee in respect of the portion of the suit premises, of which he has taken over forcible possession. However, it is admitted that the *licensed premises* i.e. half the portion of the central hall admeasuring 11' X 18', had indeed been licensed to the Respondent, but, upon the termination of such license, the occupation of the Respondent in respect of even such *licensed premises*, was unauthorized. This is clearly the scope and import of the averments in the plaint, if read in entirety.

10. The Respondent, on the other hand, has claimed that the entire central hall was either let out or given on leave and license to him for business purpose. In such circumstances, it was submitted that the suit, as instituted, was clearly not maintainable.

11. Section 41 of the PSCCA reads thus :-

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

(1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in

Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefore, 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 Municipal Corporation Act, [the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force apply]

12. Mr. Patil, learned Counsel for Petitioners, contends that as long as the pleadings suggest the relationship of licensor and licensee and the proceedings are for recovery of '*any immovable property situated in Greater Bombay*', the suit under Section 41 of the PSCCA is clearly maintainable. Mr. Patil conceded that the Respondent might not have been the licensee in respect of the portion of the suit premises encroached upon by him, after, the same were vacated by M/s. Atmaram Satguru & Co. However, the Respondent was the licensee in respect of the *licensed premises* i.e. half of the central hall admeasuring 11' X 18' and therefore, there was a clearly a relationship of licensor and licensee between the Petitioners and the Respondent. Further, Mr. Patil submitted that the suit, as instituted, was clearly seeking recovery of possession of immovable property situated in

Grater Bombay. The two predicates prescribed under Section 41 of the PSCCA were therefore clearly satisfied and the Appeal Court unduly declined to exercise jurisdiction, which was clearly vested in it.

13. In the aforesaid regard, Mr. Patil placed reliance upon the decision of the Division Bench of this Court in the case of ***Nagin Mansukhlal Dagli Versus Haribhai Manibhai Patel***¹ and the decision of the Honble Apex Court in the case of ***Mansukhlal Dhanraj Jain Versus Eknath Vithal Ogale***².

14. In the present case, from the pleadings of the parties, it is clear that the suit, as instituted, was in respect of two distinct portions of the suit premises. The first portion comprised half the central hall admeasuring 11' X 18', which was earlier licensed to M/s. Atmaram Satguru & Co. The other portion (*licensed premises*), again comprising the balance half of the central hall admeasuring 11' X 18', was licensed to the Respondent. Insofar as the *licensed premises* are concerned, there can be no dispute that the suit under Section 41 of the PSCCA was clearly maintainable, as, inasmuch as, such suit was between licensor and licensee and related to recovery of possession of the *licensed premises*. However, if the encroached portion of the suit premises is concerned, the view taken by the Appeal Court, that no relief could be granted under Section 41 of the PSCCA, cannot be regarded as a view, which is in excess of jurisdiction. Admittedly, it is the case of the Petitioners themselves that the portion of the suit

1 1979 Bom.C.R. 348

2 1995 (2) SCC 665

premises earlier licensed to M/s. Atmaram Satguru & Co. was never licensed to the Respondent. Rather, the Respondent has encroached upon such portion after breaking open the lock. Therefore, in respect of such distinct portion of the suit premises, there was no licensor-licensee relationship as between the Petitioners and the Respondent. There is accordingly no case made out to interfere with the impugned order to the extent it declines relief of restoration of possession of the portion of the suit premises, earlier licensed to M/s. Atmaram Satguru & Co. However, since there was clearly a licensor-licensee relation in respect of the *licensed premises*, which form a distinct portion of the suit premises, the Appeal Court has exceeded jurisdiction in holding otherwise and interfering with the Judgment and Decree made by the Trial Court, which in any case, had ordered only partial eviction of the Respondent from the suit premises i.e. the *licensed premises*. To this extent, therefore, the impugned order warrants interference.

15. In the case of ***Nagin Mansukhlal Dagli*** (*supra*), the Division Bench of this Court rejected the contention that after the termination of license either by efflux of time or otherwise, since the Defendant may have been described as a trespasser, the jurisdiction of the Small Causes Court under Section 41 of the PSCCA is ousted. Similarly, the Hon'ble Apex Court, in the case of ***Mansukhlal Dhanraj Jain*** (*supra*), has held that even a suit by a licensee seeking permanent injunction against the licensor from disturbing possession, otherwise than by due process of law, was maintainable before the Small Causes Court in view of the provisions contained in Section 41

(1) of the PSCCA. None of the decisions can, however, assist Mr. Patil, in view of the averments made by the Petitioners in the plaint that at least a distinct portion of the suit premises, which had earlier been licensed to M/s. Atmaram Satguru & Co, were never licensed to the Respondent, rather, the same were encroached upon by the Respondent.

16. Mr. Dahibawkar, learned Counsel for Respondent, placed reliance upon the decisions of Full Bench of this Court in the case of *Central Warehousing Corporation, Mumbai, Vs. Fortpoint Automotive Pvt. Ltd., Mumbai*³, and on the Division Bench of this Court in the case of *Faijulbee Hajeel & others Versus Yadali Amir Shaikh Ansari*⁴. Mr. Dahibawkar was, however, unable to elucidate upon the relevance of the said two decisions in the context of controversy raised. In the case of *Faijulbee Hajeel & others (supra)*, the Division Bench has distinguished its earlier decision in the case of *Nagin Mansukhlal Dagli (supra)* by observing that the Plaintiff in the said case had gone to the Court with case that he was the licensor of the suit premises and the Defendant was the licensee, though the license had come to an end.

17. The Appeal Court has, without any justification, declined to uphold the decree made by the Trial Court on the alleged ground that it would be very difficult to execute such decree unless there is proper description of the suit premises in the plaint as well as in the

3 2010 (1) Mh.L.J. 658

4 1984 (2) Bom.C.R. 253

Judgment. In the first place, this was the matter which could have been left to the Executing Court. Secondly, the description, in the plaint, was quite clear. The suit premises comprised the entire central hall. Half of the central hall admeasuring 11' X 18' was licensed to M/s. Atmaram Satguru & Co. and the balance half, again admeasuring 11' X 18', was to the Respondent. This description was more than sufficient and in the light of such description, there was no warrant to conclude that the decree made by the Appeal Court would be difficult to execute. Mr. Dahibawkar contended that there were no particulars as to which half i.e. right hand half or the left hand half was licensed to the Respondent. This is too slender a premise to deny a decree. At the highest, this is a matter which could have been left to the Executing Court to determine under Section 47 of the CPC and several other legal provisions which empower the Executing Court to undertake such exercise. This was clearly not a case where the *licensed premises* were not at all identifiable or that the difficulty of identification was of such magnitude as would virtually render it impossible to effectively execute the decree made. Admittedly, the Petitioners continue in occupation of the two premises flanking the central hall. Only half portion of the central hall had been licensed to M/s. Atmaram Satguru & Co. and the balance half to the Respondent. The dimensions of the hall as also the respective half portions have been clearly set out in the plaint and reiterated in the evidence. The Appeal Court, therefore, exceeded in its jurisdiction in interfering with the decree made by the Trial Court on 04/03/1996.

18. Accordingly, the impugned order dated 08/12/1997 made by the Appeal Court is set aside. The Judgment and Decree dated 04/03/1996 made by the Trial Court is restored. Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

19. At this stage, Ms. Pooja Kharat i/b M/s. Dahibawkar & Co., learned Counsel for Respondent, prays for a stay on the execution of decree dated 04/03/1996 for a period of eight weeks from today. Subject to filing of usual undertaking within a period of two weeks from today, the eviction decree dated 04/03/1996 shall not be executed for a period of eight weeks from today.

20. A copy of the undertaking to be furnished to the learned Counsel for Petitioners, before the same is filed in the Registry.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment.