

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

WRIT PETITION NO.11033 OF 2014

Dadajee Dhackjee & Co. Ltd.

**A Company incorporated under the
Provisions of Indian Companies Act, 1913
Having its office at San ghrajaka House,
431, Dadasaheb Bhadkamkar Marg,
Mumbai-400 007**

.. Petitioners

Versus

- 1. Smt. Neelam V. Rajani
Age 50 years, Occ: Service,**
- 2. Shri. Mahesh Mankar,
Age 40 years, Occ: Service,**
- 3. Mrs. Meena Sunil Deshpande,
Age 64 years, Occu: Housewife,
The Trustees of Shree Pant Bhuvan
Charity Trust, registered under the
Bombay Public Trust Act, 1950
Having their office at Shree Panth
Bhuvan, Mamasahab Warerkar Bridge,
Chowpatty, Mumbai 400 007.**
- 4. Hickson & Dadajee Pvt. Ltd.
A private limited company having its
Registered office at Shri. Pant Bhuvan,
Sandhurst Bridge, now known as Mamasahab
Warerkar Bridge, Chowpatty,
Mumbai 400 007**

5. New India Assurance Co. Ltd.

6. Standard Chartered Bank (Deleted)

.. Respondents

Mr. Shailesh Shah, Senior Advocate a/w Mr. Vivek Rana i/by Mahesh Jani & Co., for the Petitioners.

Mr. Raj Patel i/by Mohan Patel, for the Respondent Nos.2 & 3.

Mr. R. M. Haridas, for the Respondent No.4.

Ms. Rita Yadav i/by Mrs. Swapnila Rane & Mrs. Vanita Kakar, for the Respondent No.5.

CORAM : R.M. SAVANT, J.

DATE : 24th NOVEMBER, 2015

ORAL JUDGMENT

1. At the outset, the Learned Senior Counsel appearing for the Petitioners seeks deletion of the Respondent No.6 as in the context of the challenge raised in the above Petition the Respondent No.6 is a formal party. The said Respondent is accordingly deleted at the risk of the Petitioners.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The Writ Jurisdiction of this Court is invoked against the order dated 12.09.2014 passed by the Learned Chief Judge of the Small Causes Court, Mumbai, by which order the application being Transfer Application No.294 of 2014 filed by the Respondent No.4 herein came to

be allowed and resultantly, RAE & R Suit No.726/1127 of 2003 was ordered to be transferred from Court Room No.16 to Court Room No.23 in the Small Causes Court, Mumbai.

4. It is not necessary to burden this order with unnecessary details. The facts necessary to be cited for adjudication of the above Writ Petition lie in a narrow compass. The Petitioners claim to be lessees of the property in question which was leased out to them by the Respondent Nos.1 to 3 by a lease executed on 07.08.1968 for a period of 35 years. The Petitioners by creating sub-leases on 14.01.1972 and 02.12.1981 have further subleased the properties to the Respondent Nos.4 and 5 to the above Petition. The Petitioners filed suit bearing RAE & R Suit No.726/1127 of 2003 for evicting the Respondent No.4 from part of the suit premises which was sublet, the eviction sought was on the ground of arrears of rent, water charges and other charges. It seems that the lease granted in favour of the Petitioners by the landlords i.e. Respondent Nos.1 to 3 expired in the year 2003. The Petitioners as a consequence received a letter from the Respondent Nos.1 to 3 terminating their tenancy on account of the expiry of the lease. The Landlords i.e. Respondent Nos.1 to 3 herein filed the suit bearing TE & R Suit No.235/254 of 2003 for recovery of possession of the suit premises from the Petitioners. It seems that both the suits are at the stage where the evidence of the Plaintiff is to

start in both of them i.e. the suit filed by the Petitioners as also the suit filed by the Respondent Nos.1 to 3. The Respondent Nos.1 to 3 filed Transfer Application No.294 of 2014 before the Learned Chief Judge of the Small Causes Court for transfer of both the suits to one Court and be heard together i.e. either transfer both the suits to Court Room No.16 or Court Room No.23. The said Transfer Application No.294 of 2014 was replied to on behalf of the Petitioners and the maintainability of the application was questioned. The Learned Chief Judge of the Small Causes Court has by the impugned order dated 12.09.2014 allowed the said application. The principal ground on which the said application is allowed is that it would be convenient for the parties as otherwise the parties would have to prosecute the suits in different Courts and same would therefore occasion delay in the disposal of the said suits. The Learned Chief Judge has also observed that the suits are required to be transferred to one Court in the interest of justice and expeditious disposal of the said suits. It is the said order dated 12.09.2014 passed by the Learned Chief Judge of the Small Causes Court, Mumbai which is taken exception to by way of the above Petition.

5. Heard the Learned Counsel for the parties. The principal contention of the Learned Senior Counsel appearing for the Petitioners is as regards the power of the Learned Chief Judge of the Small Causes

Court to transfer the suit by having recourse to Section 10 of the Presidency Small Cause Courts Act, 1882 (For short “PSCC Act, 1882). It is the contention of the Learned Senior Counsel that recourse to the said provision could not have been taken by the Learned Chief Judge to transfer the suit from one Court to another Court in the Small Causes Court. It was the submission of the Learned Counsel that the power under Section 24 of the Civil Procedure Code (For short “CPC”), whereby such a transfer could have been effected is not vested in the Chief Judge of the Small Causes Court. In support of his contention, the Learned Senior Counsel places reliance on the judgment of a Learned Single Judge of this Court reported in 2001(3) ALL MR 230 in the matter of Smt. Manharbala Jeram Damodar & anr. Vs. Prabhudas Damodar Kotecha & ors., wherein the identical issue which arises in the instant petition arose for consideration before the Learned Judge in the said case. The Learned Judge for the sake of convenience had framed the issue which reads thus :-

“Whether the Principal Judge of the Small Causes Court has powers to transfer a matter allotted to another Judge of the same Court on an application by a party contending bias on the part of the Judge.”

The Learned Judge having regard to the provisions of Section 10 of the “PSCC Act, 1882”) as also Section 24 of the CPC held that what Section 10

of the PSCC Act contemplates power in the Chief Judge to assign work to other judges of the said Court which is purely an administrative power conferred on the Chief Judge, but would not confer upon him the power to transfer the proceedings from one Court to another. Such a power according to the Learned Single Judge having regard to the said provisions as also the scheme contained in the Constitution of India is in the District Court and the High Court. The Learned Judge observed that if such a power is read as being vested in the Chief Judge, it would render Section 24 of the CPC otiose. The Learned Judge relied upon two earlier judgments of this Court in *Dhobi Shankerji Samalji Vs. Patel Vrajilal Bapalal, LIX. Indian Law Reports, 466* and *Ajam Ibram Modan Vs. Bai Hava Bibi. and Anr. AIR 1939 Bom. 485.* The Learned Judge therefore concluded that Section 10 of the PSCC Act, 1882 does not confer a power on the Chief Judge to transfer matters allocated to another Judge of the same Court and who is seized of the matter, otherwise than as an administrative measure or when there is a vacancy in the Court to which the matter was assigned.

6. Per contra, it is the submission of the Learned Counsel for the Respondent No.4 i.e. proponent of the application that such a transfer can be ordered by having recourse of Section 151 of the CPC. It is the submission of the Learned Counsel that the application for transfer was

made having regard to the fact that the parties were the same and that the dispute was in respect of the same premises. The Learned Counsel in support of the said contention sought to place reliance on the judgment of a Division Bench of this Court reported in **2010(1) Mh.L.J. 918** in the matter of **Sanjeev Indravadan Dani Vs. Rupal Sanjeev Dani**. In which case according to the Learned Counsel in the absence of a provision, the Division Bench has held that the inherent power of the Court under Section 151 of the CPC to consolidate the trial of two separate proceedings could be resorted to.

7. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As in *Smt. Manharbala's* case (*supra*), the issue that arises for consideration in the instant case is whether the Chief Judge of the Small Causes Court could have allowed the Transfer Application No.294 of 2014 by transferring the proceedings from one Court to another Court in the Small Causes Court. In so far as the powers of the Learned Chief Judge of the Small Causes Court are concerned, they are circumscribed by Section 10 of the PSCC Act, 1882. The said Section 10 of the PSCC Act, 1882 for the sake of ready reference can be gainfully reproduced hereinunder :-

“Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various

Judges thereof.”

A reading of the said Section 10, therefore, discloses that the provision confers upon the Learned Chief Judge of the Small Causes Court an administrative power to make arrangements as he thinks fit for the distribution of the business of the Court amongst the various Judges therein. Now, coming to Section 24 of the CPC, the said provision confers a power to transfer any suit, appeal or other proceedings of the High Court or the District Court either *sou-moto* or on an application made by any of the parties. The power is therefore, conferred by the said provision is on the High Court or the District Court and the mention of the Chief Judge of the Small Causes Court is conspicuously absent. In view of the fact that the powers under Section 24 of the CPC have not been conferred upon the Chief Judge of the Small Causes Court, the power if any that can be exercised by the Chief Judge of the Small Causes Court is therefore, only under Section 10 of the PSCC Act, 1882. A similar situation had arisen in *Smt. Manharbala's* case (*supra*), wherein a party had applied for transfer of the proceedings from one Court to another Court in the Small Causes Court on the ground that the Learned Judge before whom the suit was pending was biased. The said application was allowed by the Learned Chief Judge of the Small Causes Court as a consequence of which a matter had reached this Court by way of Civil Revision Application No.1405 of

2000. The Learned Single Judge of this Court as indicated above on the touchstone of the provisions of Section 10 of the PSCC Act, 1882 and Section 24 of the CPC came to a conclusion that the Chief Judge of the Small Causes Court is not vested with the power to transfer proceedings from one Court to another Court and that the said power is only vested with the High Court or the District Court. The said issue therefore can be said to be no more res-integra in so far as this Court is concerned. As indicated above, the Learned Judge has referred to two other judgments of this Court and thereafter has concluded that Section 10 of the PSCC Act, 1882 does not confer a power on the Chief Judge to transfer matters allocated to another Judge of the same Court and who is seized of the matter, otherwise than as an administrative measure.

8. In the instant case, there is no dispute about the fact that the suits are part heard before the respective Courts in as much as the evidence of the Plaintiffs in each of the suits i.e. Petitioners herein and the Respondent Nos.1 to 3 is to commence. It is at the said stage that the instant application came to be filed and as indicated above, the Learned Chief Judge has allowed the said application on the ground that it would be convenient, if the two suits are heard by the same Court as otherwise the parties would have to attend two Courts and would result in delay in the disposal of the matters. The question is not whether it would be

convenient for the two suits to be heard by one Court. The question is therefore whether there is power vested in the Chief Judge of the Small Causes Court to transfer the suit from one Court to another Court.

9. In so far as the judgment of the Division Bench of this Court in *Sanjeev Dani's* case (*supra*) on which much store was laid by the Learned Counsel for the Petitioners is concerned, in my view, the said judgment would not aid the Respondent Nos.1 to 3 in any manner, in so far as sustaining the impugned order is concerned. In the said case the Division Bench has held that recourse to Section 151 of the CPC could be taken in the interest of justice for consolidation of the two proceedings which were pending in the Family Court. In the instant case, when there is a specific provision namely Section 10 of the PSCC Act, 1882 which restricts the power of the Chief Judge to only allocation of the work amongst the Judges who are manning the Small Causes Court and also having regard to Section 24 of the CPC, the provisions of Section 151 of the CPC cannot be invoked. This is also not a case where consolidation of proceedings is sought but is a case where transfer of a proceeding which is part-heard before the concerned Court. In my view, therefore, the impugned order dated 12.09.2014 would have to be quashed and set aside and is accordingly quashed and set aside. The status-quo ante would accordingly have to be restored. The RAE & R Suit No.726/1127 of 2003

would be remitted back to Court Room No.16. Needless to state that the same would not preclude the Respondent No.4 from filing a fresh application for transfer before the appropriate Court if so advised. If any such fresh application is filed, needless to state that the said application would be considered on its own own merits and in accordance with law. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of the Petition.

[R.M. SAVANT, J]