

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

WRIT PETITION NO.10489 OF 2015

Mrs. Christabelle Grace Rana

.. Petitioner

Versus

Mrs. Dorothy Rose Rana and another

.. Respondents

**Mr. Basil P. Menezes a/w Mr. Wesley Menezes a/w Ms. Martha Butala,
for the Petitioner.**

**Mr. P. S. Dani, Senior Advocate a/w Mr. Sean Wassoodew, for the
Respondent No.1.**

CORAM : R.M. SAVANT, J.

DATE : 1st DECEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 11.09.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order the application Exh.43 filed by the Petitioner raising a preliminary issue as regards the jurisdiction of the Court under Order VII Rule 11 of the CPC came to be rejected.

2. The Petitioner herein is the original Defendant No.1 in the suit in question being LE Suit No.48/67 of 2010. The Respondent No.1 herein is the original Plaintiff and is the mother-in-law of the Petitioner. The Respondent No.2 is the original Defendant No.2 and is the husband of the Petitioner. It appears that the Petitioner and the Respondent No.2 are estranged. The Respondent No.1 herein i.e. the Plaintiff has filed the suit

in question for the eviction of the Petitioner and the Respondent No.2 herein from the premises in question which are situated in "Andora Apartments" Bandra (West), Mumbai. The suit has been preceded by a notice issued by the advocate of the Respondent No.1 to the Petitioner and her husband which notice is dated 10.03.2010. It has been stated in the notice that the noticees are residing in the eastern portion of the first floor of the said "Andora Apartments". It has further been stated that the Petitioner and her husband are occupying the said premises as gratuitous licensees and that by the said notice the said licence has been revoked and they have been called upon to hand over vacant possession of the premises. In the plaint also the said case has been pleaded by the Respondent No.1/ Plaintiff. The Petitioner herein has filed her Written Statement. It seems that the husband i.e. Respondent No.2 herein has also filed his Written Statement. The issues were initially framed on 17.07.2013. Amongst the issues framed is the issue viz. whether the Plaintiff proves that the Defendant Nos.1 and 2 are gratuitous licensees of the Plaintiff. Thereafter an additional issue has been framed to the effect whether the description of the property is correct. It is thereafter that the instant application Exh.43 came to be filed on 21.07.2015 raising a preliminary issue as regards the jurisdiction of the Court and seeking dismissal of the suit on the said ground. The said application was treated

as one under Order VII Rule 11 of the Code of Civil Procedure (For short “CPC”) as by then the suit had progressed and therefore Section 9A of the CPC could not have been invoked. The said application was replied to on behalf of the original Plaintiff by her Constituted Attorney Mrs. Francesca Von Geyer. The Trial Court considered the said application and has by the impugned order dated 11.09.2015 rejected the same. Before the Trial Court the Defendant No.1 i.e. the Petitioner herein apart from reiterating the case as set out in the application namely that the Court does not have jurisdiction on the ground that the Defendant Nos.1 and 2 have been termed as gratuitous licensees. On behalf of the Petitioner i.e. the Applicant the order passed by Division Bench of this Court in Writ Petition No.1881 of 1995 was relied upon as also the decree passed in RAD Suit No.32 of 1996 dated 01.04.2006. The Trial Court has referred to the order passed by the Division Bench of this Court as well as the decree passed in the said RAD suit. The Trial Court has rejected the contention based on the said order and decree by observing that the said order and decree were in respect of particular proceedings before those Courts and which are in respect of parties involved in the said cases. The Trial Court has also observed that the admission of the Defendant No.2 cannot be considered as an admission in the present case when in the said case the facts for consideration before the said Court were different. The Trial Court lastly

observed that it was for the Plaintiff to prove her case and that since the Plaintiff has made averments which are appearing in the plaint and also documents to substantiate her said claim, the suit could not be rejected on the contentions raised by the Defendant No.1. As indicated above, the Trial Court has answered the preliminary issue and rejected the same by holding that the plaint cannot be rejected at the said stage.

3. In the above Petition, the Learned Counsel Mr. Basil P. Menezes sought to place reliance on the order passed by the Division Bench in the said Writ Petition No.1881 of 1995 as also the decree passed in RAD Suit No.32 of 1996. In so far as the order passed by the Division Bench is concerned, the said order was passed in a Writ Petition filed seeking de-requisition of the premises which were it seems requisitioned under the Bombay Land Requisition Act. It is in the said context that the observations have been made by the Division Bench. The Division Bench has whilst making said observations was probably referring to amendment which was made in the Bombay Rent Act, wherein the occupants of the requisitioned premises prior to a particular cut off date have been given the status of tenants. The Division Bench has therefore held that the Respondents who were the occupants of the requisitioned premises were tenants and it is for the landlords i.e. Petitioners amongst whom was the Plaintiff in the present suit as the heir of her husband who had originally

filed the Writ Petition as also the Respondent No.2 herein who is the son of the Respondent No.1 to file a suit for their eviction. In my view, therefore, the said order can hardly aid the Petitioner in her pursuit of the rejection of the plaint under Order VII Rule 11(d) of the CPC. In so far as the decree passed in RAD Suit No.32 of 1996 is concerned, the said suit was filed by the persons claiming to be tenants who had sought a declaration that they were tenants, which suit the Trial Court had decreed. It is required to be noted that the Petitioner was neither a party to the Writ Petition nor a party to the said suit, in my view, therefore the Trial Court has rightly rejected the contention raised on behalf of the Petitioner i.e. the original Defendant No.1 based on the said two orders. As rightly observed by the Trial Court, an inquiry is required into the issues which arose for consideration before the Trial Court in the suit in question and therefore, the plaint cannot be rejected at the threshold as is sought by the Petitioner. The reliance placed by the Learned Counsel for the Petitioner on the judgments reported in 2014(3) Mh.L.J. 760 in the matter of Chandabai wd/o Devidas Mahule and another Vs. Mehmood Khan Abdul Hamid Khan and 2014(1) ALL MR 185 in the matter of Kishorbhai Premchand Shah Vs. Hirji Bhojraj & Sons Kutchi Oswal Jain Chhatralay Trust & Ors. is misplaced in the facts and circumstances of the case. In that view of the matter, impugned order does not suffer

from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]