

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 933 OF 2016

Kailaschandra s/o Harakchand Soni,
age 65 years, occupation : Nil,
R/o Naya Bazar, Sadar Bazar, Jalna,
Tq. and Dist. Jalna

.. Petitioner/
Original
Plaintiff

versus

Amarlal s/o Vedaram Talreja,
Age 50 years, occup. Trade,
Proprietor of Shop Sapna Booth House,
Soni Complex, Shop No. 5, in front of
Maratha Building, Charwaipura,
Sadar Bazar, Jalna, Tq. and Dist. Jalna

.. Respondent/
Original
Defendant

Mr. B. A. Darak, Advocate for petitioner
Respondent no. 1 served.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 27TH APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Respondent despite service has not put in appearance. Heard learned counsel for petitioner finally.

2. Petitioner-original plaintiff, aggrieved by order passed on 26-11-2015 by Joint Civil Judge, Senior Division, Jalna, rejecting application moved by him at Exhibit - 26 seeking transfer of rent suit bearing regular civil suit no. 8 of 2014 to

the court of Civil Judge, Junior Division, Jalna, is before this court.

3. The petitioner has filed eviction proceedings bearing regular civil suit no. 8 of 2014 in the court of Civil Judge, Senior Division, Jalna, seeking possession of suit property according to provisions of the Maharashtra Rent Control Act, 1999 [for brevity, "The Act"].

4. It appears that the suit came to be assigned to the court of Joint Civil Judge, Senior Division, Jalna.

5. Section 33 in chapter VII of the Act which reads thus;

"33. Jurisdiction of courts.

(1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, -

(a)

(b)

(c) elsewhere, the court of the Civil Judge (Junior division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority), and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or deal with such claim or question."

6. Taking into account aforesaid provision, an application Exhibit-26 was moved by petitioner-original plaintiff to transfer said rent suit to the court of Civil Judge, Junior Division, Jalna, for hearing. In support of said application, certain citations were relied on as referred to in the application.

7. Learned counsel contends that to application Exhibit-26, there was no particular resistance on behalf of the respondent-defendant. He further points out that it is the practice that the suits are generally instituted addressing to the Court of Civil Judge, Senior Division and upon filing, the same are made over / assigned to the respective courts viz. the court of Joint Civil Judge, Senior Division or court of Civil Judge, Junior Division, according to general directions of district judge or having regard to provisions of the Bombay City Civil Courts Act, 1948.

8. Having regard to the provisions of section 33 aforestated, it was but incumbent to assign / make over the suit to the court of Civil Judge, Junior Division, however, unfortunately suit had been assigned to the court of Joint Civil Judge, Senior Division. Learned counsel, therefore, submits

that Exhibit-26 had been moved for taking corrective action in respect of the same.

9. Learned counsel further refers to that attention had been drawn of the learned trial judge to the position that there are courts of Civil Judge Junior Division available at Jalna and, therefore, having regard to the authorities referred to in the application Exhibit-26, suit ought to be transferred to the court of Civil Judge, Junior Division.

10. The position almost appears to have been conceded to, on behalf of respondent having regard to narration as occurring under the impugned order.

11. Learned judge in paragraph 6 of the impugned order has referred to occurrences of certain events under which the matter has been assigned / transferred to his court which depict that as a matter of fact, initial assignment of the suit was to the court of Joint Civil Judge, Junior Division.

12. In the present case, perusal of impugned order shows that paragraph no. 10 of the judgment in the case of *Sukhlal vs. Vinayak*, reported in 2014 (3) *Mh.L.J.* 939 has been apparently considered in paragraph no. 7 of impugned order. However,

the purport underlying the same appears to have been missed out, for, the provisions of law show that where-ever there is no court of civil judge, junior division, it would be the court of civil judge, senior division which may be able to decide *lis* between the parties under the provisions of the Act.

13. In the present case, it is not that the court of civil judge, junior division was not available at Jalna and further that as a matter of fact, suit had earlier on been assigned to the court of civil judge, junior division whereas, on reshuffling, it came to be assigned and transferred to the court of joint civil judge, senior division. However, no details of such assignment and exercise of powers for the same have been placed on record. Looking at the plain legislative intendment under the phraseology employed in section 33 of the Act it was but natural that the matter in regular course ought to have been assigned to the court of civil judge, junior division, yet, it is assigned to the court of joint civil judge, senior division.

14. Thus, impugned order does not ostensibly appear to be sustainable pursuant to powers under section 23 of the Bombay City Civil Court Act, 1948 or section 24 of the Code

of Civil Procedure, 1908. In a way, it may appear to be proper, learned judge saying that senior division would also have jurisdiction, however, operation of the provision would require that senior division may deal with the suit only in case court of civil judge, junior division not being available.

15. Having regard to the decisions as referred to and relied on in the application Exhibit-26, as also paragraphs 10 of the judgment in the case of *Sukhlal vs. Vinayak* as has been referred to in paragraph no. 7 of order impugned, it is in the absence of court of civil judge, junior division, that the court of civil judge, senior division would be able to deal with the suit of the kind under the Act. May be that the learned judge found it difficult to pass appropriate orders on application on his own for want of powers to deal with the application. However, considering overwhelming decision as has been referred to in impugned order, the matter should be assigned to the court of civil judge, junior division and application may be moved by present petitioner before the district judge for proper assignment of the suit.

16. In view of aforesaid, impugned order does not deserve to be kept on record and as such stands set aside with liberty

to the present petitioner as referred to in paragraph no. 12 hereinabove.

17. Learned counsel for the petitioner, at this stage, submits that in stead of referring the matter to the district court, powers of this court may be exercised. However, being not provided with requisite details, it would be difficult for this court to pass order directing suit to be transferred to the court of Civil Judge, Junior Division. Said exercise can be done by the District Court.

18. Writ petition stands allowed. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH,
JUDGE

pnd