

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1550 OF 2016

Mrs. Vaishali Abhimanyu Joshi ...Petitioner
Versus
Mr. Nanasaheb Gopal Joshi ...Respondent
....
Mr. S.S. Kulkarni, Advocate for the Petitioner.
Mr. Jaydeep Deo, Advocate for Respondent No.1.
....

CORAM : R. G. KETKAR, J.

DATE : 07th July, 2016

P.C.

1. Heard Mr. S.S. Kulkarni, learned Counsel for the petitioner and Mr. Jaydeep Deo, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5.11.2014 passed by the learned 5th Additional Judge, Small Causes Court, Pune below Exhibit-1 in Civil Suit No.77/2013 as also the judgment and order dated 17.12.2015 passed by the learned District Judge-21, Pune in Civil Revision No.17/2015. By order dated 5.11.2014, the learned trial Judge held that the counter claim set up by the petitioner, hereinafter

referred to as 'defendant', and the relief claimed therein are ousted by the Court of Small Causes on the ground of jurisdiction vide Section 9A of Code of Civil Procedure, 1908 (for short, 'C.P.C.'). Aggrieved by that decision, the defendant preferred Revision Application before the District Court under Section 34 of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act'). By order dated 17.12.2015, the learned District Judge dismissed the Revision Application on the ground of maintainability. It is against these orders, the original defendant has instituted present Writ Petition.

3. The respondent, hereinafter referred to as the 'plaintiff', has instituted the suit against the defendant in Small Causes Court, Pune seeking mandatory injunction directing the defendant to stop the use and occupation of flat No.4 on the 1st Floor in a building constructed at sub-plots No.1 and 2 out of layout of S.No.45, Hissa No.3A+5C+2A/1A/1 (corresponding CTS No.323) situate at Erandvana, Pune (for short, 'suit flat') admeasuring about 700 sq. ft. within the municipal limits of Pune Municipal Corporation. The plaintiff has also sought perpetual injunction against the defendant from using/occupying the suit flat as also obstructing the plaintiff as

also his family members to possess, use and occupy the suit flat.

4. It appears that during pendency of the suit, the plaintiff took out application Exhibit-5 for interim reliefs. The defendant filed written statement dated 11.6.2014 as also say to Exhibit-5 and set up counter claim. The defendant came with the case that she is married to Abhimanyu, son of the plaintiff. Along with her daughter Ishwari, she is residing in the suit flat since 26.1.2004 along with her husband and since 13.6.2011 after her husband left the suit flat. She has set up counter claim against the plaintiff regarding the residence orders as per Section 19 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') and prayed for declaration that the suit flat is the shared household and for injunction restraining the plaintiff from dispossessing from the suit flat and disturbing her possession in any manner in the suit flat as also for injunction restraining the plaintiff from entering suit flat as per Section 19 of the D.V. Act and from creating third party interest.

5. The plaintiff filed application under Section 9-A of C.P.C. at Exhibit-29 on 14.7.2014 for framing preliminary issue

regarding jurisdiction of the Small Causes Court to entertain the counter claim set up by the defendant on the ground that the suit is instituted under Section 26 of the Provincial Small Causes Court Act, 1887 (for short, 'P.S.C.C. Act') and the relief of declaration is not covered under Section 26 of the P.S.C.C. Act. The relief of declaration cannot be tried by the Small Causes Court. The defendant filed reply at Exhibit-32 on 16.8.2014. As noted earlier, by order dated 5.11.2014, the learned trial Judge held that the counter claim set up by the defendant and the relief claimed therein cannot be tried by the Small Causes Court. Against that decision, the defendant preferred Revision Application under Section 34 of the Maharashtra Rent Act, which was dismissed on the ground of maintainability. It is against these orders, the defendant has instituted the present Writ Petition.

6. In support of this petition, Mr. Kulkarni submitted that the learned trial Judge committed serious error in holding that the counter claim set up by the defendant cannot be tried by the Small Causes Court. He relied upon Section 3(c) and 15 of the P.S.C.C. Act. He also relied upon Sections 17, 18, 19, 26 and 36 of the D.V. Act. He submitted that D.V. Act is enacted with a

view to providing for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Section 26 of the D.V. Act lays down that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings before a Civil Court, Family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceedings was initiated before or after the commencement of the Act. Section 36 of the D.V. Act lays down that the provisions of D.V. Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

7. Mr. Kulkarni submitted that having regard to the object for which D.V. Act is enacted as also in view of provisions of Sections 26 and 36 of the D.V. Act, it has to be held that the counter claim set up by the defendant can be tried by the Small Causes Court constituted under P.S.C.C. Act. There is no conflict between the provisions of the P.S.C.C. Act and the D.V. Act. In case there is conflict between the two enactments, the provisions of D.V. Act will prevail over P.S.C.C. Act being the enactment enacted in a latter point of time. Small Causes Court,

being a Civil Court, the reliefs under these Sections can also be claimed before that Court. In support of these submissions, he relied upon the following decisions :

- [i] **Ambreen Akhoon v. Aditya Aurn Paudwal & Anr. 2015 LawSuit(Bom) 1472**
- [ii] **Re. Ramaswamy Mudalia, AIR 1957 MADRAS 673**
- [iii] **Fair Air Engineers Pvt. Ltd and another v. N.K. Modi, (1996) 6 SCC 385**, and in particular paragraphs-15 and 16 thereof.

8. On the other hand Mr. Deo supported the impugned orders. He submitted that the Small Causes Court is not a Civil Court. The Civil Courts are established under the Bombay Civil Courts Act. Small Causes Courts is established under the P.S.C.C. Act. He further submitted that unless other enactment confers jurisdiction on the Court constituted under the P.S.C.C. Act, the Court constituted under the P.S.C.C. Act cannot absorb the jurisdiction conferred by any other Act. Section 7(2)(b) of the Family Courts Act, 1984 (for short, 'F.C. Act') substantiate this contention. Section 7(2)(b) of the F.C. Act lays down that subject to the other provisions of that Act, a Family Court shall also

have and exercise such other jurisdiction as may be conferred on it by any other enactment. He submitted that D.V. Act has not conferred jurisdiction upon the Small Causes Court constituted under the P.S.C.C. Act to entertain and try the claims / reliefs under the D.V. Act. He also relied upon Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act') and corresponding Section 33 of the Maharashtra Rent Act. He invited my attention to Section 15 and Second Schedule of P.S.C.C. Act and in particular clause (11) of Second Schedule and submitted that a suit for the determination or enforcement of any other right to or interest in immovable property is excepted from the cognizance of a Court of Small Causes. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 3(c) of the P.S.C.C. Act lays down that nothing in P.S.C.C. Act shall be construed to affect any local law or any special law other than C.P.C. The plain language of Section 3(c) admits no doubt. Section 3(c)

declares that the provisions of P.S.C.C. Act shall not affect any local law or any special law other than C.P.C. Section 15(1) of P.S.C.C. Act lays down that a Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

Section 15 reads thus :

“15. Cognizance of suits by Courts of Small Causes.-- (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.”

10. Perusal of sub-section (1) of Section 15 of P.S.C.C. Act shows that a Court of Small Causes Court shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

Clause 11 of the Second Schedule reads thus :

“ THE SECOND SCHEDULE
SUITS EXCEPTED FROM THE COGNIZANCE OF
A COURT OF SMALL CAUSES

(11) a suit for the determination or enforcement of any other right to or interest in immovable property;”

11. As against this, Section 17 of the D.V. Act declares that notwithstanding anything contained in, any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. The expression 'shared household' is defined in Section 2(s) of the D.V. Act. Section 18 empowers the Magistrate to pass protection order in favour of the aggrieved person and prohibit the respondent from committing the acts enumerated in clauses (a) to (g). Section 19 empowers the Magistrate to pass a residence order as enumerated in Clauses (a) to (f) thereof. Section 20 empowers the Magistrate to direct the respondent to pay the monetary relief. Section 21 empowers the Magistrate to grant temporary custody of any child or children to the aggrieved person. Section 22 empowers the Magistrate to pass order directing the respondent to pay compensation and

damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent. Section 26 of the D.V. Act reads thus :

“26. Relief in other suits and legal proceedings.-- (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

12. Perusal of sub-section (1) of Section 26 shows that any relief available under Sections 18, 19, 20, 21 and 22 can also be sought in any legal proceeding before a Civil Court. Section 36 declares that the provisions of D.V. Act shall be in addition to and not in derogation. The moot question is whether there is any provision under the D.V. Act which is similar to Section 7(2)(b) of

the F.C. Act and whether in view of Section 15 read with Second Schedule of P.S.C.C. Act, the counter claim set up by the defendant can be tried by the Small Causes Court. Section 7(2)(b) of F.C. Act reads thus :

“7. Jurisdiction.--

- (1)
- (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise---
 - (a)
 - (b) such other jurisdiction as may be conferred on it by any other enactment.”

13. The scheme of D.V. Act does not indicate that there is any provision similar to Section 7(2)(b) of the F.C. Act. In other words, there is no provision under the D.V. Act whereunder the jurisdiction is conferred upon Small Causes Court constituted under P.S.C.C. Act to entertain and try the disputes falling under the D.V. Act. As against this, the intention of the Legislature is clearly borne out from Section 15 and Second Schedule of the P.S.C.C. Act. In fact sub-section (1) of Section 15 of P.S.C.C. Act specifically prohibits Small Causes Court from taking cognizance of the Suits which are excepted in the Second Schedule.

14. As noted earlier, clause (11) of the Second Schedule of P.S.C.C. Act which is one of the excepted categories does not empower the Small Causes Court to entertain and try the suit for the determination or enforcement of any other right to or interest in immovable property. In the counter claim the defendant has prayed for residence orders as provided in Section 19 of D.V. Act as also for declaration that the suit flat is the shared household as per section 2(s) of D.V. Act and also for injunction restraining the plaintiff (i) from dispossessing her from the suit flat and disturbing her possession in any manner in the suit flat, (ii) from entering suit flat, and (iii) from creating third party interest as per Section 19 of D.V. Act. It is not in dispute and cannot be disputed that the counter claim is to be tried as a suit. The defendant seeks determination or enforcement of her right or interest in the suit flat i.e. immovable property. In view thereof, counter claim set up by the defendant cannot gone into by the Small Causes Court in view of express language of Section 15 and Second Schedule of P.S.C.C. Act. If the contention of Mr.Kulkarni is accepted, it will enlarge the jurisdiction of Small Causes Court and the same will be contrary to mandate of Section 15 and Second Schedule of P.S.C.C. Act.

15. Mr. Kulkarni relied upon the decision in the case of **Ambreen Akhoon (supra)**. In that case the respondent No.2 mother-in-law had moved application under Order 1 Rule 10 of C.P.C. for deleting her on the ground of misjoinder of party. It was contended before the Family Court that respondent No.2 mother-in-law cannot be made a party to the nullity proceedings filed under the Hindu Marriage Act or Special Marriage Act as the Family Court has jurisdiction in respect of the proceedings between the parties to marriage only. This Court referred to the provisions of Section 2(q) of the D.V. Act which lay down that the aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. The Court referred to the provisions of Section 26 of the D.V. Act as also Section 7 of the F.C. Act and in paragraph-18 recorded that the Court has restricted its finding only to the extent and answered that the relatives of the husband being respondents under Section 2(q) of the D.V. Act can be made party respondents before the Family Court if the proceedings specified under Section 26 of the D.V. Act are preferred. In view thereof, I do not find that the said decision advances the case of the defendant. In the case of

Ramaswamy Mudaliar (supra), Madras High Court considered Sections 3(c) and 15 of the P.S.C.C. Act. I have already dealt with Section 3(c) and 15 of the P.S.C.C. Act. In my opinion, this decision also does not advance the case of the defendant.

16. As far as the decision in the case of **Fair Air Engineers Pvt. Ltd.** (supra) is concerned, the controversy that fell for consideration before the Apex Court was whether the proceedings before the Forums created under the Consumer Protection Act, 1986 is a legal proceedings and whether the Commission is a Judicial Authority. While dealing with this controversy, the Apex Court observed in paragraph-16 that the District Forum, State Commission and National Commission are Judicial Authorities for the purpose of Section 34 of the Act and in view of Section 3, the Forums created under the Consumer Protection Act are at liberty to proceed with the matter in accordance with the provisions of that Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties.

17. Mr. Kulkarni relied upon paragraph-15 and 16 to contend that Section 3 of the Consumer Protection Act lays-down

that the provisions of the Act are in addition to and are not in derogation of any other law in force. Even Section 36 of the D.V. Act is on the same lines. In my opinion, for the reasons already indicated, D.V. Act has no provision to confer the jurisdiction over the P.S.C.C. Act. On the other hand, in view of express language in Section 15 as also Second Schedule of P.S.C.C. Act, the Small Causes Court constituted under the P.S.C.C. Act cannot entertain and try the counter claim. If the contention of Mr.Kulkarni is accepted, it will enlarge the jurisdiction of Small Causes Court which will be contrary to the mandate of Section 15 read with Second Schedule of P.S.C.C. Act. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

18. It is made clear that I have not examined the merits of the counter claim set up by the defendant. It is also made clear that the impugned order and this order will not preclude the defendant from approaching the appropriate forum for reliefs claimed in the counter claim. If such proceedings are initiated, the concerned Court will decide the same on the basis of the evidence on record and in accordance with law, uninfluenced by

the observations made in the impugned order and this order.

19. At this stage, Mr. Kulkarni submits that the proceedings before the Small Causes Court may be stayed for a period of four weeks from today. Mr. Deo strongly opposed this prayer on the ground that the proceedings before the Small Causes Court are pending since November, 2013. Having regard to the fact that the defendant intends to challenge this order before the higher Court as also having regard to the arrangement between the parties, I find that the request made by Mr. Kulkarni is reasonable. Hence, notwithstanding dismissal of the Writ Petition, for a period of four weeks the proceedings before the Small Causes Court, Pune being Civil Suit No.77/2013 are stayed with clear understanding that no further extension shall be sought. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)