

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4362 OF 2015

Mr. Kantilal Meghji Raja

.. Petitioner

Versus

Mr. Surendrabhai Keshav Nagda and another

.. Respondents

Mr. P. J. Thorat, for the Petitioner.

Mr. Pankaj Dwivedi, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY 2016

PC.

1. The order dated 21.01.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, dismissing the Appeal filed by the Petitioner against the order dated 26.09.2011 allowing the application Exh.28 for injunction is taken exception to by way of the above Petition.

2. The Petitioner herein is the original Defendant No.1 i.e. the original landlord in respect of the suit premises and the Respondent No.1 herein is the original Plaintiff. The Respondent No.2 in the above Petition is the original Defendant No.2 and was at the relevant time the developer who was entrusted the work of redevelopment of the property in which the suit premises are situated. The suit in question being RAD Suit No.26

of 2006 was filed for the following substantive reliefs :-

(a) that is declared that Plaintiff is a tenant in respect of suit premises being Room No.11, in Building known as Raja Mansion, L. T. Marg, Dahisar (West), Mumbai-400 068;

(b) that Defendants be ordered and decreed jointly and/or severally to provide Plaintiff with permanent alternate accommodation as agreed at the suit site in lieu of suit premises;

(c) that in the alternative, Plaintiff be directed allowed to erect permanent alternate accommodation at the suit building site and Defendants be ordered and decreed jointly and severally to reimburse Plaintiff for the cost incurred;

(d) that Defendants be ordered and decreed to pay to the Plaintiff leave and licence charges for temporary alternate accommodation obtained at the address mentioned in the title of the Plaint from April 2002 till date;

3. It seems that the summons were served on the Defendants. However, the Defendants did not appear, resulting in the suit being decreed ex-parte. The said ex-parte decree came to be set aside and the suit came to be restored to file and the Defendants were permitted to file their written statement. The Defendant No.1 i.e. the Petitioner accordingly filed his written statement on 08.08.2011 and having regard to the prayers sought vide prayer clauses (b) to (d), raised a preliminary issue as regards the jurisdiction of the Court exercising powers under the Maharashtra Rent Control Act, 1999, to adjudicate upon the said prayers.

The relevant excerpt from paragraph 1 of the said written statement is reproduced hereinunder for the sake of ready reference :-

“This defendant submits that in substance the claim in the suit for specific performance of the rights and claim for permanent alternate accommodation under the alleged agreement and therefore also this court has no jurisdiction to entertain and try this suit. This defendant therefore submits that a preliminary issue be framed as to the jurisdiction of this Hon'ble Court as provided under Section 9(A) of Civil Procedure Code and the same be tried and decided in accordance with law.”

4. The Defendant No.1 therefore sought the framing of a preliminary issue under Section 9-A. It appears that during the same contemporaneous time, the Plaintiff filed the instant application Exh.28 for an injunction for restraining the Defendants from creating third party interest in respect of the permanent alternate accommodation to be provided to the Plaintiff in the newly constructed building in place of Raja Mansion, L. T. Marg, Dahisar (West), Mumbai-400 068. The said injunction sought was inter-alia on the basis of the averments which have been made in the said application Exh.28, which averments include the averment that the developer had issued a letter of allotment and had thereafter entered into an agreement with the Plaintiff in respect of the permanent alternate accommodation. As indicated above, the Defendant No.1 in his written statement had questioned the maintainability of the

suit having regard to the prayers in the suit and especially prayer clauses (b) to (d) to the suit, by which prayers according to the Defendant No.1, the Plaintiff was seeking specific performance of the agreement in respect of the permanent alternate accommodation.

5. The Trial Court notwithstanding the fact that a preliminary issue as regards the jurisdiction of the Court to try the suit was raised, did not frame an issue under Section 9-A and proceeded to decide the application Exh.28 and decided the same by its order dated 26.09.2011. The Trial Court deemed it appropriate to grant injunction for the reasons mentioned in the said order. On the matter being carried in Appeal by the Defendant No.1 i.e. the Petitioner herein, the Appellate Court has confirmed the said order and dismissed the Appeal. In my view, the Courts below have erred in proceeding with the application for temporary injunction Exh.28 when a preliminary issue had been raised by the Defendant No.1 relating to the jurisdiction of the Court to try the suit. As mandated by the said provision i.e. Section 9-A and as held in a catena of judgments of this Court as well as the Apex Court, that when an issue of jurisdiction is raised under Section 9-A, it is incumbent on the concerned Court to frame the said issue and try the said issue before the application for injunction can be tried. It is only in the contingency mentioned in Section 9-A(2) that the application for injunction can be decided pending

the consideration of the issue of jurisdiction. The Courts below having not followed the said course of action, in my view, directions are required to be issued to the Trial Court to now frame a preliminary issue as to the jurisdiction of the Court under Section 9-A having regard to the pleadings that are appearing in paragraph 1 of the written statement. Since the Courts below have already adjudicated upon the application Exh.28, which as indicated above has also been confirmed by the Appellate Bench of the Small Causes Court, this Court does not deem it appropriate to interfere with the impugned order in the present Writ Petition. Hence, the fate of the impugned orders would depend upon the adjudication of the issue of jurisdiction. Hence, the following directions are issued :-

- I) The Learned Judge of the Small Causes Court is directed to frame issue of the jurisdiction of the said Court having regard to Section 9-A of the CPC and try and decide the said issue by giving proper opportunity to the parties.
- II) The parties would appear before the Trial Court on 29.02.2016. On which day, the Trial Court would frame the said issue and would fix the schedule for deciding the said issue.
- III) The said issue to be decided latest by 15.04.2016.
- IV) However the adjudication of the application Exh.28

would be ascribable to an application made under Section 9-A(2) of the CPC.

V) The fate of the order dated 26.09.2011 passed by the Learned Judge of the Small Causes Court as well as the impugned order dated 21.01.2015 passed by the Appellate Bench of the Small Causes Court would therefore be contingent upon the decision of the Trial Court as well as the Appellate Court on the said issue.

VI) Needless to state that the Trial Court would give proper opportunity to the parties including to lead evidence on the said issue.

With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]