

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

WRIT PETITION NO. 4363 OF 2016

Mahanagar Telephone Nigam Ltd
Mumbai

..Petitioners

Vs

Maharana Inn Resorts Pvt Ltd

.. Respondents

Ms. Tanmayi R. Gadre a/w Mr. Ravi Goenka and Mr Amol Arote i/b
Goenka Law Associates, Advocates for Petitioners.

Ms. Pranjali Bhandari, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 15/07/2016

PC:

1. Heard Ms.Tanmayi Gadre, learned counsel for the petitioners and Ms. Pranjali Bhandari, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 18.3.2016 passed by the learned Judge, presiding over Court Room No.13, of the Small Causes Court at Bombay below Exhibit-64 in L.D.Suit No. 49 of 2005. By that order, the learned trial Judge rejected the application Exhibit-64 taken out by the defendants for deciding Issue No.5, namely, whether this Court has jurisdiction to

entertain, try and decide this suit? as a preliminary issue.

3. In support of this Petition, Ms. Gadre has invited my attention to the assertions made in the plaint as also prayer clause (a). In paragraph 12, the respondents, hereinafter referred to as 'plaintiffs, have asserted that they have entered into a loan agreement with the H.D.F.C Bank and have also mortgaged the suit property to the said Bank to secure the loan. If the defendants fail to pay monthly compensation as per the Leave and Licence Agreement, the plaintiffs will not be able to meet their liability with H.D.F.C. Bank and as a result thereof, the suit property will be brought for sale under the mortgage. She submitted that basically having regard to the assertions made in the plaint as also the prayer, this is a suit for specific performance and in the alternate for damages. In view of Section 19(h) and (s) of the Presidency Small Causes Courts Act, 1887 (PSCC Act, for short), the Small Causes Court will have no jurisdiction to entertain and try the suit. She further submitted that proviso to Section 34 of the Specific Relief Act, 1963 lays down that where the plaintiff is able to seek further relief than a mere declaration of title, the Court may not grant declaration of title as sought by the plaintiffs. In other words, she submitted that the plaintiffs could have sought further relief in addition to relief of declaration and therefore on this count also suit is not

maintainable.

4. Ms. Gadre further submitted that initially leave and licence agreement was entered into between the parties on 27.7.1999 for a period of 5 years commencing from 1.3.1999 and ending on 28.2.2004. Though the plaintiffs sought for renewal of leave and licence agreement, that request was not acceded to by the defendants. In fact, the defendants have handed over possession to the plaintiffs on 26.2.2006 and have paid licence fees for the entire period when the defendants were in occupation. She, therefore, submitted that the learned trial Judge committed error in rejecting the application.

5. On the other hand, Ms Bhandari supported the impugned order. She submitted that the defendants have not paid the licence fees for the entire period as claimed by them. The defendants have adjusted the licence fees in respect of the suit premises situate on the first floor against the premises on the ground floor on leave and licence basis.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is the case of the plaintiffs that during the subsistence of leave and licence agreement, the defendants sent a letter dated 3.12.2003 to the plaintiffs expressing their desire to renew a licence for a further period of five years from

1.3.2004 and requested the plaintiffs to send a draft agreement for their approval. The plaintiffs asserted that they sent reply dated 8.1.2004 enclosing therewith a draft agreement of leave and licence for approval of the defendants. After approving the draft agreement, the defendants sent the approved copy of leave and licence agreement to the plaintiffs along with their covering letter dated 25.2.2004. Now there is a dispute between the parties as regards compensation as also who should bear cost of registration of leave and licence agreement. The plaintiffs asserted that as the defendants did not send any reply, the licences created under the two agreements of leave and licence dated 27.7.1999 are deemed to have been renewed for a further period of five years from 1.3.2004 to 28.2.2009 as per the contents of the letter dated 21.2.2005 of the plaintiffs. It is in that context, in paragraph 14, the plaintiffs asserted that as this is a suit between licensor and licensee relating to nonpayment of monthly compensation and recovery of monthly compensation and arrears, the Small Causes Court has jurisdiction to entertain and try the suit. By prayer clause (a), the plaintiffs have claimed declaration that the agreement of leave and licence between the plaintiffs and defendants is valid, subsisting and binding on the defendants and that the defendants are liable to pay agreed monthly compensation till expiry of the licence period. Prayer

clause (a) has to be appreciated in the background of the assertions made by the plaintiffs namely that leave and licence agreement is deemed to have been renewed up to 28.2.2009 and consequently the defendants are liable to pay compensation till then.

7. It has also come on record that after framing of issues, the plaintiffs have already led evidence in respect of issues including issue of jurisdiction. The learned trial Judge therefore observed that the defendants cannot be allowed to lead evidence on the issue of jurisdiction. Even otherwise, Order 14 Rule 2 of C.P.C reads thus:

“2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

8. In the light of the controversy between the parties as to whether the leave and licence agreement is deemed to have

been renewed or not cannot be said to be a pure question of law. It is a mixed question of law and fact and parties will have to lead evidence in that regard. There is also dispute about payment of licence fees by the defendants. The defendants contend that at the time of handing over possession, they had paid entire amount of licence fees. As against this, the plaintiffs contend that the defendants have adjusted payment of licence fees of suit premises which is situate on the first floor against payment of licence fees of premises situate on the ground floor. Even on this ground, the request made by the defendants to frame issue no.5 as a preliminary issue could not have been acceded to. Ms. Gadre relied upon Section 19(h) and (s) of P.S.C.C. Act as also Section 34 of the Specific Relief Act, 1963. The reliance placed on these provisions is wholly misconceived for the reasons indicated earlier. 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. The learned trial Judge will decide the suit uninfluenced by the observations made in the impugned order and this order.

(R.G.KETKAR, J.)