

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

CIVIL REVISION APPLICATION NO.448 OF 2016

Shri Vivek Ramchandra Pradhan
and Ors

..Applicants.

Vs

Dr.Narendra Anant Mule, since
deceased, through legal heirs
Smt. Vimal Narendra Mule and
Ors.

.. Respondents

Mr. Satish S. Raut, Advocate for Applicants.

**CORAM : R.G.KETKAR,J.
DATE : 02/08/2016**

PC:

1. Not on Board. At the request of Mr.Raut, taken up for admission. Heard Mr. Satish Raut, learned counsel for the applicants at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, herein after referred to as defendants no. 1 to 4 have challenged the Judgment and order dated 1.1.2016 passed by the learned Addl. Judge, Small Causes Court, Pune below Exhibit-81 in Civil Suit No. 15 of 2009. By that order, the learned trial Judge rejected the application made by defendants no. 1 to 4 under section 9A read with Order VII, Rule 11 and Order 14 of C.P.C. for framing

preliminary issue as to whether the small Causes Court has jurisdiction to entertain and try the suit.

3. In support of this application, Mr. Raut has invited my attention to paragraph 1 of the plaint. In paragraph 1, the plaintiffs have asserted that half of the building where the suit premises is situate, is completely demolished. The remaining half portion is in a very dangerous and ruinous condition. The building is likely to collapse any time. It is also beyond repairs. The building is no longer "premises". He submitted that in view of the assertions made in paragraph 1 of the plaint, defendants no. 1 to 4 filed application Exh.81 on the ground that as the "premises" as defined under section 7(9) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') are not in existence, the Small Causes Court has no jurisdiction to entertain and try the suit. He has taken me through the copy of the application-Exhibit 81 and in particular paragraph 2 thereof. He submitted that the learned trial Judge ought to have framed issue, namely, whether the Small Causes Court has jurisdiction to entertain and try the suit or not.

4. Mr. Raut also relied upon the decision of the Apex Court in the case of Vannattankandy Ibrayi Vs. Kunhabdull Hajee, AIR 2003 Supreme Court 4453 to contend that once there is destruction of tenanted premises by fire/natural calamity,

tenancy stands extinguished. Tenant cannot assert possession under section 108(B)(e) of the Transfer of Property Act, 1882. The vacant site is not covered by definition of 'building' under the Rent Act and the landlord cannot recover possession of vacant site under the Rent Act. Landlord has to institute suit in Civil Court. Relying upon this Judgment, Mr. Raut submitted that as the premises is not in existence, as contemplated by section 7(9) of the Act, the plaintiffs cannot approach the Small Causes Court for recovery of possession and they have to approach the Civil Court for that purpose.

5. I have considered the submissions advanced by Mr Raut. I have also perused the material on record. Perusal of paragraph 1 of the plaint does not indicate that the plaintiffs have admitted that the building where the suit premises is situate, is not in existence at all. Even in paragraph 12 of the impugned order, the learned trial Judge has observed that the assertions made in the plaint indicate that the building is in such a condition that nobody is able to reside in it. However, that does not mean the premises is not in existence at all. That apart, perusal of the plaint in its entirety as also prayer clause (a) shows that the plaintiffs have sought declaration that the tenancy rights of defendants no. 1 to 4 are extinguished. In paragraph 11, the plaintiffs have specifically asserted that the suit is between

landlord and tenant and, therefore the Small Causes Court has jurisdiction to entertain and try the suit. If the assertions made in the plaint are read in the entirety, it cannot be said that the suit is not between the landlord and tenant and that the premises are not in existence.

6. In the Case of Shaha Ratansi Khimji Vs. Kumbhar Sons Hotel P Ltd, (2014) 14 SCC 1, the Apex Court has considered the decisions of Vannattankandy Ibrayi (supra) and T. Lakshmipathi Vs. Nithyananda Reddy, (2003) 5 SCC 150. In paragraph 27 of Shaha Ratansi Khimji (supra), the Apex Court has opined that the decision rendered in Vannattankandy Ibrayi (supra) does not correctly lay down the law and it was accordingly overruled. In view thereof, reliance placed by Mr Raut on the decision of Vannatankandy Ibrayi (supra) does not advance the case of the applicants. After considering the averments made in the plaint, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, application fails and the same is dismissed.

(R.G.KETKAR, J.)