

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 998 OF 2014**

Canara Bank

Vs.

Shobha Shivanand Kini & Ors.

..Applicant

..Respondents

Mr Shrinivas Bhawe a/w Ms Komal Shah i/b Bhawe & co. for the Applicant

Mr. Jaydeep Deo for the Respondent No.1

Mr. S. R. Page for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 15th FEBRUARY, 2016

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 24-7-2014 passed by the Learned Judge of the Small Causes Court Mumbai by which order, the application Exhibit 23 filed under Order VII Rule 11(d) of the Civil Procedure Code, came to be rejected.

2 The Respondent No.1 herein has filed the Suit in question being R.A.D. Suit No.1742 of 2002 for a declaration that she is the tenant in respect of the suit premises being Flat No.9, Krishna Sadan, Sitladevi Temple Road, Mahim, Mumbai 400 016. The husband of the Respondent No.1 Shivanand Kini was in the employment of the Applicant Bank and was allotted the said premises as service quarters. It seems that the service of the said Shivanand Kini were terminated and since he was not vacating the quarters that the proceedings under the Public Premises Eviction Act 1971 (hereinafter referred to as the said Act) came to be initiated against the said Shivanand Kini,

resulting in the eviction order dated 17-1-2000 being passed against him and the same thereafter being confirmed by the Learned Principal Judge of the City Civil Court, Mumbai, before whom the Appeal was filed, by judgment and order dated 23-7-2002. The challenge of the said Shivanand Kini to the orders passed by the Estate Officer and the Appellate Court failed right up to the Apex Court. It is pursuant to the said order under the said Act that possession of the premises have been obtained by the Applicant.

3 The Respondent No.1 has filed the Suit in question in the year 2002. The Applicant in view of the objection taken in the reply filed an application for temporary injunction that the preliminary issue under Section 9A as regards the jurisdiction of the Small Causes Court came to be framed. The said issue was adjudicated by the Learned Judge of the Small Causes Court by order dated 7-10-2003 whereby the Learned Judge held that the Small Causes Court has the jurisdiction to try and entertain the Suit. Hence in terms of the law applicable to Section 9A the issue as regards the jurisdiction of the Small Causes Court to try the Suit is concluded. It is thereafter that the instant application Exhibit 23 came to be filed on 24-1-2014 under Order VII Rule 11(d) of the Civil Procedure code and the ground made out was that the suit premises are public premises within the meaning of the said Act and therefore in view of Section 15 of the said Act, the jurisdiction of the Civil Court is specifically barred.

4 The said application was replied to on behalf of the Plaintiff. It was the case of the Plaintiff that the issue has already been decided in view of the adjudication which has taken place under Section 9A by order dated 7-10-2003 and therefore the application Exhibit 23 is hit by the principles of Resjudicata. The Trial Court has considered the said application and as indicated above has by the impugned order dated 24-7-2014 rejected the said application. The Trial Court has held that for the purposes of Order VII Rule 11(d) the averments made in the plaint are material and in so far as present case is concerned, it is the case of the Plaintiff that the Defendant Bank has accepted the rent of the suit premises from her and therefore she wants to prove her tenancy right to the said premises. The Trial Court has also adverted to the adjudication which has taken place under Section 9A and in which adjudication by order dated 7-10-2003. The Trial Court has held that it has the jurisdiction to try and entertain the Suit.

5 The thrust of the submission of the Learned Counsel appearing on behalf of the Applicant is to the fact that the premises in question being public premises, the Suit filed for declaration of tenancy is not maintainable and therefore the plaint ought to be rejected under Order VII Rule 11(d) of the Civil Procedure Code. The Learned Counsel sought to draw this court's attention to the orders passed in the proceedings which had arisen on account of the

orders passed under the said Act, to buttress the said contention.

6 In my view, the Trial Court was right in observing that in so far as Order VII Rule 11(d) is concerned, it is only the averments in the plaint which are to be looked into and not the defence in the Written Statement. As indicated above, it is the case of the Plaintiff that she has been paying rent to the Defendant Bank i.e. the Applicant herein. The said case would obviously have to be tested on the touchstone of the material that would come on record. It is on the said basis that the Trial Court has rejected the said application. It is also to be borne in mind that there is already an adjudication under Section 9A wherein the Trial Court has held that it has the jurisdiction to try and entertain the Suit.

7 In my view therefore, the order passed by the Trial Court rejecting the application cannot be faulted with. The orders on which the Learned Counsel for the Applicant seeks to rely can undoubtedly be relied upon by the Applicant in the Suit so as to contend that the Plaintiff is not entitled to any relief but that would not mean that the Suit as such would not maintainable. In that view of the matter, no case for interference in the Revisionary Jurisdiction of this court is made out. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]