

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936. WRIT PETITION NO. 415 OF 2014

Raghuveer Prasad Sohanlal Vaid,
age 80 years occupation business
R/o Chitrakoot, near Sagar Park, Jalgaon Dist. Jalgaon
(DIED), through legal representatives:

- 1-A. Navneet S/o Raghuveer Prasad Vaid,
age 54 years occupation business R/o 57/59,
Zaveri bazaar, Madan Mansion, IIInd Floor,
Mumbai - 2
- 1-B. Mrs. Sangeeta Pradipji Agrawal,
age major occupation business
R/o 809, Ivory Towers, South City-1, Gurugaon - 122001

...PETITIONERS

VERSUS

1. Shankarlal Gulabchand & Co.,
A registered Partnership Firm, having its office at 103,
Bhavani Peth, Jalgaon Dist. Jalgaon Through its partners:
Ramnarayan Jagannath Agrawal (DIED)
Through legal representatives:
- 1.a Vinod Ramnarayan Agrawal
1.b Pramod Ramnarayan Agrawal

- 1.c Kailash Ramnarayan Agrawal
- 1.d Madhuri Ramnarayan Agrawal
- 1.e Sushilabai Ramnarayan Agrawal
All adults, business by occupation and
R/o Navi Peth, Ganesh Building, Jalgaon.

- 2. Shankarlal Gulabchand Agrawal (DIED)
Through : Legal representatives:

- 2.a Ritesh Omprakash Agrawal,
age 35 years occupation business
R/o 122, Navi Peth, Jalgaon

- 2.b Suresh Shankarlal Mor,
age major occupation business
R/o Main road, Pachora Taluka Pachora Dist. Jalgaon.

...RESPONDENTS

Mr Ramesh R. Mantri, Advocate for petitioners

Mr Subodh P. Shah, Adv. for respondents No. 1-a,1-b, 2-a & 2-b.

CORAM : NITIN W. SAMBRE, J.

DATE :20th September, 2017

ORAL ORDER :

Petitioner/tenant has moved present petition questioning
the order dated December 20, 2013, passed in Small Cause Suit No. 91

of 1988, by the 6th Joint Civil Judge (Senior Division), Jalgaon, whereby application Exh. 158 moved by the petitioner/tenant before the learned Small Cause Court viz. Civil Judge (Senior Division), Jalgaon, for trying following issue as preliminary issue, was turned down.

“Whether the provision of Bombay Rent Act is applicable to the present case or not ?”

2. Shri Mantri, learned Counsel for the petitioner i.e. original defendant/tenant would urge that the issue sought to be raised and canvassed as a preliminary issue goes to the root of the matter, as applicability of the Bombay Rent Act to the proceedings in question will decide the forum and legal considerations under the said Act for effective determination of the dispute. According to him, as such, the learned Trial Court by rejecting the prayer for trying the said issue as preliminary issue has committed an error of law. He would then urge that the finding if not recorded on the said issue as a preliminary issue, great prejudice will be caused to the present petitioner/defendant as the status in the plaint as regards protection under specific statute cannot be ascertained and accordingly defence to that effect cannot be established. As such, according to him, order impugned needs interference with direction to the learned Small Cause Court to frame the said issue as preliminary issue and record finding thereon.

3. Per contra, the learned Counsel for the respondent-owner Shri Shah would urge that the proceedings are taken out purely with an intention to buy time. Dispute between the parties is pending adjudication since 1988 i.e. almost for last 30 years. He submits that in an earlier round of litigation, the parties to the proceedings have approached the Apex Court in Civil Appeal No. 298 of 2006, in which the Apex Court while deciding the matter, on 6th January 2006, has made following observations:

“ One of the questions which indisputably would arise for consideration of the Small Causes Court would be as to whether having regard to the nature and character of the demise made in favour of the appellant by the respondent herein, the same would constitute transfer of the premises together with the machineries installed therein or it was principally a demise of the machinery and incidentally the premises had also been transferred.

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Keeping in view the aforementioned decisions of this Court, we are of the opinion that despite the fact that the learned Judge of Small Causes Court as also the High Court may be correct in arriving at the aforementioned findings that on the face of the averments made in the plaint, the learned Judge of Small Causes Court had the jurisdiction to entertain the plaint, but ultimately a finding of fact as to whether the provisions of the Bombay Rent Act would be applicable or not must be determined in terms of

the conditions of the lease dated 1.11.1966 as also on the basis of other admissible evidence which may be adduced by the parties.

In this view of the matter, we are of the opinion that interest of justice would be subserved if the question raised by the appellant herein be considered afresh by the learned Judge of Small Causes Court while deciding the merit of the matter after hearing the counsel for the parties and we direct accordingly. We have issued the aforementioned directions in view of the fact that the said deed of lease is not before us. Furthermore, it is possible that the terms and conditions of the deed of lease may have to be explained by the parties by adduction of oral admissible evidence, if the same are ambiguous.”

4. According to him, once Apex Court having observed that the Small Cause Court, who is seized of the matter may record findings on its jurisdiction to try and entertain the plaint while deciding the suit finally, the application ought not to have been moved. He sought dismissal of the petition.

5. From the claim made by the rival parties, it is required to be noted that it is an admitted fact that there is registered lease deed in between the parties. The Small Cause Suit No. 91 of 1988 is pending adjudication for almost last more than 29 years.

6. At the interlocutory stage, the parties had already travelled upto the Apex Court, wherein the Apex Court has recorded above referred findings, as are extracted from the order dated 6th January 2006, passed by the Apex Court in Civil Appeal No. 298 of 2006. The Apex Court was alive of the fact as to whether the Bombay Rent Act will be applicable or not, is an issue, which was canvassed before it, and as such, made observation that the Small Cause Court shall determine the said issue, keeping in mind conditions of the lease deed.

7. The Apex Court then observed that such issue if raised, will be decided while deciding the matter on merit.

8. In spite of the said findings recorded by the Apex Court, the present petitioner/tenant, contrary to the views expressed by the Apex Court, has moved the application praying for trying for the said issue, as regards applicability of the Bombay Rent Act as a preliminary issue.

9. Said conduct on the part of the petitioner/tenant is nothing more than the act, which is contrary to the observations made by the Apex Court in its order dated 6th January 2006 passed in Civil Appeal No. 298 of 2006.

10. In the said background, in my opinion, no interference is

warranted in extra ordinary jurisdiction in the order impugned passed by the learned Small Cause Court while deciding the application Exh. 158.

11. Before parting, considering the conduct of the petitioner/tenant, in my opinion, cost of Rs. 200/- (Rs. Two hundred only) saddled by the learned Small Cause Court is too meagre to censure his conduct as it could be gathered from the conduct of the petitioner/tenant that he is buying time and prolonging the litigation for one reason or the other.

12. In the facts and circumstances of the case, it will be appropriate in my opinion to enhance said cost of Rs. 200/- (Rs. Two hundred only) to Rs. 2500/- (Rs. Two thousand five hundred only) to be deposited before Small Cause Court, within period of four weeks from today, to which respondent/plaintiff will be entitled to withdraw the same. As suit is pending sine last thirty years, it will be appropriate to direct learned Trial Court to decide the suit as expeditiously as possible in any case not later than six months from the date of receipt of this Order.

13. The petition stands dismissed with above observations.

(NITIN W. SAMBRE, J.)

pjm