

conducting tailoring business therein. By a conducting agreement dated 1 January 1973, the Plaintiff allowed the Defendant to conduct the tailoring business till 30 November 1973. The Defendant agreed to vacate the premises and return the articles mentioned in the schedule appended to the said agreement at the end of this period. The agreement was revoked and cancelled by a notice issued by the Plaintiff on 8 October 1973. The Defendant was called upon to hand over vacant and peaceful possession of the premises to the Plaintiff, which the former refused to do. In the premises, the Plaintiff filed an ejectment application, being Application No.444 of 1974, in the Small Causes Court at Bombay on 27 September 1974, seeking possession of the suit premises under Section 41 of the Presidency Small Causes Courts Act, 1882 ("PSCC Act"). The suit was contested by the Defendant on the ground *inter alia* that she was a tenant in respect of the suit premises and that the application was not maintainable under Section 41 of the PSCC Act. The plea of tenancy raised by the Defendant was heard as a preliminary issue. The Small Causes Court, by an order dated 31 December 1981, rejected the plea of tenancy set up by the Defendant. The Defendant filed an appeal from this order before the appellate bench of the Small Causes Court. The appeal was dismissed by the appellate bench on 7 February 1984. Against this order of dismissal, a writ petition was filed by the Defendant before this Court. This Court, by order dated 16 November 1989, rejected the writ petition and confirmed the order of the Trial court holding that the defendant was not a tenant, as the agreement between the parties was only for conducting the tailoring business in the suit premises. After the writ petition was dismissed by this Court, the Defendant amended her written statement in the pending ejectment application before the Small Causes Court and

pleaded that since the agreement was only for conducting business, the Small Causes Court had no jurisdiction under Section 41 of the PSCC Act. The ejectment application was nevertheless decreed on 25 October 1990 and the Defendant was ordered to vacate and hand over possession of the suit premises to the Plaintiff on or before 30 October 1990. The Defendant preferred an appeal from this decree. The appeal was dismissed by the appellate bench of the Small Causes Court. The appellate court order was challenged by the Defendant before this Court in Writ Petition No.127 of 1998. This Court allowed the writ petition, holding that the Defendant was not a tenant and only conducting the Plaintiff's business in the suit premises as per the agreement of conducting and therefore, the Small Causes Court had no jurisdiction to decide the application. The judgment and decree of the Small Causes Court was accordingly set aside. The Plaintiff preferred a Letters Patent Appeal before a division bench of this Court. The appeal was disposed of on the ground that it was not maintainable. This Court, however, reserved liberty unto the Plaintiff to seek an appropriate remedy in respect of possession of the suit premises before an appropriate forum.

5 The Plaintiff, accordingly, filed the present suit before the City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai. The case of the Plaintiff in the present suit was that the conducting agreement executed between the parties was revoked and at any rate, stood lapsed by efflux of time and that the original Defendant and after her the present Respondents, who were joined as Defendants in that suit, were trespassers in the suit premises. It was submitted that the original Defendant had even withdrawn her security deposit from the Plaintiff and in the premises, the

Defendants were liable to be evicted from the suit premises. It was also submitted that the Defendants had inducted a third party in the suit premises and that third party was conducting the business of preparing keys and number plates of motor vehicles instead of the tailoring business. On all these grounds, the Plaintiff prayed for a decree of eviction against the Defendants and possession of the suit premises.

6 The original Defendant had filed her written statement and disputed the ownership of the Plaintiff in respect of the suit premises. The Defendant relied upon the agreement dated 1 January 1973, claiming the same to be an agreement of tenancy or, at any rate, of licence. Defendant No.2 after his joinder to the suit, filed an additional written statement, raising a plea that the agreement of conducting business was sham, colourable and not to be acted upon; that the original Defendant was in exclusive possession of the suit premises as a licensee of the Plaintiff and by a virtue of amendment to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act), as of 1 February 1973, became a protected licensee/deemed tenant in respect of the suit premises. Defendant No.2 also raised certain other pleas, concerning taking over of the land under [The Maharashtra Regional and Town Planning Act, 1966](#) ("MRTP Act") by Municipal Corporation of Greater Mumbai and the property being declared as slum, due to which the present suit was not maintainable. The following issues were raised in the suit :

“Issues :

1. Whether plaintiff proves that she had allowed deceased defendant to conduct her tailoring business in the suit premises ?

2. Whether plaintiff proves that the conducting agreement has been cancelled as it is expired by the efflux of time ?
3. Whether plaintiff proves that defendants are in unlawful possession of the suit premises ?
4. Whether plaintiff is entitled for recovery of possession ?
5. What order/decreree ?”

7 The parties led evidence on these issues. When the final arguments in the suit were to be heard, the Defendants presented additional draft issues on 3 May 2014 on the basis of the additional written statement *inter alia* concerning declaration of the suit property as a slum under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (“Slum Act”). The application for framing of additional issues was rejected by the City Civil Court at Bombay *inter alia* on the ground that the subject matter of the suit was not covered either by MRTP Act or Slum Act, since the Defendants were not seeking any protection from MCGM or a third party. Considering that the Defendants had, admittedly, entered into the suit premises through the Plaintiff, there was no need of framing additional issues as prayed for. This order was challenged by the Defendants in a writ petition presented to this Court (Writ Petition No.5839 of 2014). This Court, by its order dated 2 July, 2014, held that the City Civil Court at Bombay was right in holding that the claim of the Defendants of being licensees in respect of the suit premises was barred by res-judicata and the defendants being only conductors in respect of the business carried on in the suit premises, the suit filed cannot be said to be for possession of the suit premises in strict sense of the term and there was no infirmity in

the order of the City Civil Court. The writ petition was, accordingly, dismissed with costs. While dismissing the petition, this Court observed that the Defendant, being an old lady, had been struggling to recover possession of her premises from the Defendants since year 1973, which she was kept away from inspite of a whole round of litigation earlier filed in Small Causes Court at Bombay.

8 Finally, the parties were heard on the original issues framed in the suit, even written arguments were filed and the suit was finally decreed by the Trial Court. On the issue of conducting licence, the Court held that the relationship between the Plaintiff and the original Defendant was already established and finally concluded by the order of this Court in Writ Petition No.127 of 1998. This Court by that order had concluded that the agreement between the parties was for conducting business only. It, accordingly, answered Issue No.1 in favour of the Plaintiff and against the Defendant. The Trial Court also accepted the evidence of the Plaintiff that by way of notice dated 8 October 1973, the conducting agreement was cancelled by her and the original Defendant was called upon to deliver peaceful possession of the suit premises alongwith the articles mentioned in the schedule. The Trial Court observed that anyway the original conducting agreement stood terminated by efflux of time on 31 November 1973. It, accordingly, answered Issue No.2 in the affirmative. As far as Issue Nos.3 and 4 are concerned, the Court held the Plaintiff to be entitled to get possession of the suit premises from the Court Receiver. (In the meantime, pending the hearing of the suit, the court receiver was appointed in respect of the suit premises. However, it appears that the possession of the suit premises was not handed over to the court receiver

by the Defendant. The court receiver, in the premises, took physical possession of the suit premises from one Shah Mohammed, who was found to be running computerised key cutting business in the suit premises for last seven years. The Trial Court even observed that before filing of the present suit, the original Defendant appeared to have inducted Shah Mohammed in the suit premises illegally.) The Court, in the premises, directed the court receiver to hand over vacant and peaceful possession of the suit premises to the Plaintiff after expiry of the statutory period of appeal.

9 This order is now challenged before this Court in the First Appeal. It is submitted by learned Counsel for the Appellant/Defendant that the suit is barred by the law of limitation. No such plea appears to have been raised in the written statement of the Defendant. At any rate, from the above narration, it is apparent that immediately after terminating the conducting agreement, the Plaintiff had filed a proceeding before the Small Causes Court at Bombay for recovery of possession. She even secured a decree from that Court. It is only when this Court, in a writ petition from the appellate decree of the Small Causes Court, held the agreement between the parties to be a conducting agreement and on that footing, negatived the jurisdiction of the Small Causes Court to decide the eviction suit under Section 41 of PSCC Act and a Division Bench of this Court in Letters Patent Appeal observed that it was open to the Plaintiff to adopt an appropriate remedy before an appropriate forum, that she filed the present suit for eviction and possession before the City Civil Court at Bombay. The earlier proceedings before the Court of Small Causes can certainly be termed as bonafide prosecution of remedy before a Court lacking in

jurisdiction. In any event, there was no occasion for the Court to consider all this, as there was no plea of bar of limitation raised before it.

10 Learned Counsel for the Appellant also submits that the Defendant is a deemed tenant of the Plaintiff in respect of the suit premises. Much water has flown since the plea of tenancy was first raised before, and rejected by, the Court. Finally, this Court, as I have noted above, has confirmed in its order in the writ petition referred to above that the original Defendant was merely a conductor in respect of the business carried on in the suit premises. There is, thus, no merit in this contention. Learned Counsel for the Appellant submits that his pleas in the additional written statement, namely, application of the provisions of MRTP Act and the suit premises being declared as a slum, are not considered by the Trial Court. Even this aspect of the matter has been finally put at rest, when this Court passed its order in the writ petition referred to above. The Trial Court's refusal to fame additional issues in this behalf was upheld by this Court. In any event, this being a private dispute in respect of the Defendant's possession of the suit premises as between the owner and the conductor, there is no question of applying Section 42 of the Slum Act to such dispute.

11 Accordingly, there is no merit in the First Appeal. The First Appeal is dismissed with costs.

12 In view of the dismissal of the First Appeal, Civil Application No.1097 of 2017 does not survive and the same is also disposed of.

13 The court receiver to act on the authenticated copy of this order.

14 Learned Counsel for the Appellant prays for stay of this order for a period of four weeks. On his application, the order is stayed for four weeks.

(S.C. GUPTE, J.)