

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

WRIT PETITION NO.6169 OF 2015

Niraj Rohit Oza & anr.

... Petitioners

Vs.

Mrudula Rohit Oza

... Respondent

Mr.Kunal Vaishnava with Rahul Raut i/b M/s.N.N. Vaishnawa & Co.
for the Petitioners

Mr.Bhavesh Parmar with Vijay Prakash Yadav with Rajesh Sahani
i/b Roy's Law Firm for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 1, 2017**

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally.
2. This Writ Petition is directed against the order dated 5.3.2015 below exhibit 49 thereby rejecting the prayer for settlement of additional issue on the point of jurisdiction. The respondent is the plaintiff, who filed suit for simpliciter injunction against the present petitioners. Plaintiff i.e., the respondent herein, is the mother of Defendant No.1 i.e., the petitioner No.1 herein and

defendant No.2 is the daughter-in-law of the plaintiff. The suit premises, for which the parties are fighting for, is a tenanted premises which stood in the name of the father-of-law of the plaintiff. Till today, there is no change in the name of the tenant by the landlord. The petitioners have filed a suit in the Small Causes Court for declaration that they are the tenants. The said suit is pending in the Small Causes Court. In the suit, the plaintiff claims that she is in lawful possession, her status being a tenant, and the defendants also claim that they have right in the suit premises being lawful tenants alongwith the plaintiff and his sister.

3. The learned Counsel for the petitioners raised the issue of jurisdiction in the written statement. The said issue was not framed when the issues were settled on 19.11.2008. By way of a separate application below exhibit 49, it was prayed to the Court that the issue be framed. However, the learned Judge has rejected the prayer mainly on two grounds – firstly that the suit is for perpetual injunction which is triable by the civil Court and secondly, that earlier the order of interim relief was granted in favour of the plaintiff and at that time, the issue of jurisdiction was raised by the defendants i.e., the present petitioners and the said

issue was decided in favour of the plaintiff. The order dated 1.2.2008 granting interim relief was confirmed in Appeal from Order No.88 of 2008 and the said interim was confirmed by the High Court. Hence, there is no necessity to frame an additional issue once it is decided at interim stage.

4. The learned Counsel for the petitioners has submitted that even if a particular point is decided at an interim stage, it cannot be said as finally decided and it can be raised and taken up for final decision at the stage of final hearing of the suit. He has submitted that his suit for declaration as a tenant alongwith plaintiff is before the Small Causes Court. He further submitted that both the parties are claiming their lawful possession in the suit premises being their status as tenant and that is the disputed issue till today.

5. The learned Counsel for the respondent/original plaintiff has supported the order of the learned trial Judge. He has submitted that the issue of jurisdiction was taken up as one of the grounds before the High Court in Appeal from Order No.88 of 2008. He read over the portion of the order passed by the learned Single Judge of this Court, confirming the order of interim relief granted by the trial Court and holding that the civil Court has every

jurisdiction to try and entertain the suit.

6. Heard submissions and read the orders as also the relevant portion in the orders of the High Court and also the documents which are relied on by the parties. In the written statement, in para 3, the defendants have raised the point of jurisdiction, as in the interim order, there was also no challenge given to jurisdiction by the defendants. At that time, the civil Court has held that it has inherent jurisdiction. The ground of jurisdiction was taken in appeal from order by the defendants, however, after going through the order passed by the High Court, it is found that no specific finding in respect of jurisdiction of the civil Court is given by the High Court. It is also submitted by the learned Counsel that there is delay in making this application. Today, the examination in chief by the plaintiff is on record and the plaintiff is facing cross-examination. It is to be noted that the findings whatever given, were at the stage of the interim stage and moreover, it shows that the defendants tried to raise the issue at the interim stage so also when they filed written statement and therefore, it is necessary to frame the additional issue of jurisdiction, as the issue can be

added or deleted at any stage by the trial Court till the stage of judgment.

7. In the circumstances, the trial Court may decide the issue in favour of the plaintiff or may be in favour of the defendants but it is appropriate to frame the additional issue and decide the same.

8. Rule made absolute accordingly.

9. The learned Counsel for the respondent prays for stay of this order so as to enable him to challenge this order before the hon'ble Supreme Court. The learned Counsel for the petitioners opposed the oral prayer for stay. However, in the circumstances of the case, stay granted for three weeks from today.

(MRIDULA BHATKAR, J.)