

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.469 OF 2015

Vinod Shamsunder Aneja,]
Adult, Indian Inhabitant,]
Plot No.74B, Kandivali Co-op. Industrial]
Estate, Charkop, Kandivali (West),]
Mumbai – 400 067.] Applicant

Versus

Paper Corrugation and Packaging Pvt. Ltd.,]
Through its Director Mr. Tulsiram Kayal,]
Plot No.74B, Kandivali Co-op. Industrial]
Estate, Charkop, Kandivali (West),]
Mumbai – 400 067.] Respondent

Mr. Ketan Chothani, a/w. Ms. P.M. Bhansali, for the Applicant.

Mr. Ram Upadhyay, a/w. Mr. Yogesh Gaikwad, i/by M/s. Bilwala & Co.,
for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH DECEMBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Chothani, learned counsel for the Applicant, and Mr. Upadhyay, learned counsel for the Respondent.

2. By this Petition, filed under Article 227 of the Constitution of India, the Applicant is challenging the order dated 7th May 2015 passed by the City Civil Court, Dindoshi, Mumbai, below “Exhibit-7” in Special Civil Suit No.1366 of 2013, thereby dismissing the said application. The said

application was filed by the Applicant for framing and determining the issue of jurisdiction as preliminary issue.

3. Respondent herein has filed Special Civil Suit No.1366 of 2013. Applicant is the Defendant in the said Suit. According to the Applicant, the suit premises were given to him as a 'gratuitous licensee' and he is running a business therein in the name of M/s. Eden Air Freshners Private Limited. He has relied upon the letter issued by the Plaintiff to that effect on 22nd June 1998. Further he has also relied upon the statement of one Mr. Tulsiram Ramswarup Pakal, which is produced at Page No.49(D) to this Petition, to show that, the business run in the said premises is strictly and purely owned by the Applicant. It was submitted that, in the light of these undisputed documents, the Suit should have been filed in the Court of Small Causes in view of the settled position of law that, even in respect of the 'gratuitous licensee', the jurisdiction lies only with the Small Causes Court, if the Suit is for eviction and possession.

4. This application came to be resisted by the Respondent herein contending, *inter alia*, that possession of the Applicant is purely that of a 'care taker'. The very letter, on which the Applicant is placing reliance, that of 22nd June 1998, makes it clear that no rental rights were given under the facility, which was given to the Applicant for running business

in the suit premises. Further, it was submitted that, the very case made out by the Applicant in his written statement was that he has purchased the suit premises from one Mr. Satyanarayan Garg and, therefore, he cannot appropriate and re-probate by claiming at the same time that he is a 'gratuitous licensee' and also that he is the purchaser and in possession of the suit premises as 'owner'. Not only that, Applicant has also filed a separate Suit for declaration of his ownership over the suit premises, which is pending in Civil Court. Hence, City Civil Court also has the jurisdiction to decide the present Suit.

5. After hearing learned counsel for the Applicant and Respondent, the learned Trial Court was pleased to reject the Applicant's application holding that, the City Civil Court has jurisdiction to entertain the Suit, having regard also to the fact that the Applicant himself has also filed a Suit on the basis of the letter issued by the Director Mr. Satyanarayan Garg that he has agreed to sell the suit premises to the Applicant.

6. This order of the Trial Court is challenged in this Revision Application by learned counsel for the Applicant by submitting that, the letter dated 22nd June 1998 is more than sufficient to show that the business run in the suit premises is owned by the Applicant and his possession, as averred in the plaint itself, is that of a 'care taker' and, therefore, the licensee; may be a 'gratuitous licensee' and, therefore, the

Small Causes Court can alone have the jurisdiction to decide the present Suit. It is urged that, whatever the case the Applicant may have raised about having purchased the suit premises, that has no bearing when, as per settled position of law, the jurisdiction of the Court is to be decided on the averments made in the plaint. It is urged that, as the averments in the plaint are the sole criteria for deciding the issue of jurisdiction and as per the averments made in the plaint in paragraph No.3, it is clearly stated that the Applicant is a 'care taker' of the said property, to whom a small cabin, admeasuring about 300 sq.ft., was allotted to do the business in the name of M/s. Eden Air Fresheners Private Limited. Thus, it is urged that, when Applicant is running the business in the capacity as an 'owner' thereof, his possession becomes that of a 'licensee' and in such situation, mere statement in the letter dated 22nd June 1998 that no rental rights are given under this facility, cannot be of any help to the Applicant.

7. Per contra, learned counsel for the Respondent has supported the impugned order by pointing out that, the averments made in the plaint are required to be read in their entirety and not in a piecemeal. It is submitted that in the plaint itself, it was categorically stated that the Applicant is also claiming to be the 'owner' of the suit property on the basis that he has purchased the same from one Mr. Satyanarayan Garg, the alleged Director of the Respondent's Company. Moreover, Applicant

has also filed a separate Suit to that effect for declaring himself as 'owner' of the said premises. Hence, the impugned order passed by the Trial Court that Civil Court has the jurisdiction and not the Small Causes Court, cannot be called as illegal or irregular so as to warrant interference therein.

8. After having considered the submissions advanced by learned counsel for both the parties, this Court has to bear in mind that the well-crystallized principle that the jurisdiction of the Court has to be decided on the basis of averments made in the plaint and the averments in the plaint cannot be read in piecemeal, but they are required to be read in their entirety. It may be true that, in paragraph No.3 of the plaint, Respondent has stated that the Applicant is a 'care taker' of the said property, to whom a small cabin is given for the purpose of running his business; however, in further paragraphs, i.e. paragraph Nos.4, 5 and 6 of the plaint, the Respondent has clearly stated that the Applicant is also claiming to be in possession as an 'owner', having purchased the suit premises from one Mr. Satyanarayan Garg, who is neither a Director, nor a shareholder, or the employee of the Respondent-Company. It is pertinent to note that, the Applicant himself has filed a Suit in the City Civil Court for declaration of his ownership rights over the suit premises. Thus, the lis between the parties is confined, in real effect, to the issue as to whether the Applicant has become the owner on the basis

of the alleged Sale Deed or not. Therefore, if the averments in the plaint are read in their entirety, it cannot be said that the lis between the parties lies within the jurisdiction of the Small Causes Court. Conversely, if the Applicant himself has invoked the jurisdiction of the City Civil Court by filing a separate Suit for declaration of his ownership, it goes without saying that, only City Civil Court can decide the controversy and the issues raised and agitated between the parties.

9. Even as regards the letter dated 22nd June 1998, on which the Applicant is relying heavily, it clearly states that the facility given to him of carrying on business in the suit premises was simply an obligation and no rental rights are given under this facility. Further, when Applicant himself has approached the City Civil Court claiming to be the 'owner' of the said property and not the Small Causes Court claiming to be the 'gratuitous licensee' of the said property, then it does not lie in his mouth now to contend that the City Civil Court has no jurisdiction to try and entertain the Suit.

10. The impugned order, therefore, passed by the Trial Court, on the face of it being just, legal and correct, does not call for any interference. The Writ Petition, therefore, being without merits, stands dismissed.

11. At this stage, learned counsel for the Applicant prays for stay of

the proceedings. The said prayer is strongly opposed by the learned counsel for the Respondent. In view of the aforesaid observations, the prayer for stay is rejected.

12. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]