

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8078 OF 2017

Salim U. Khan	..	Petitioner
vs.		
Irshad Imdad Khan and anr.	..	Respondents

Mr. Arif Bookwala, Sr. Advocate a/w. Mr. Rashik Khan and Filji
Fredrick i/b FF & Associates for the Petitioner.
Mr.M.A. Dhorajiwala i/b Mr.N.A. Ghatte for Respondent No.1.
Mr. Ashraf Diamondwala i/b Diamondwala & Co. for Respondent
No.2.

CORAM : M. S. SONAK, J.
DATE: 03 OCTOBER 2017

P.C :

1] Mr. Bookwala, learned senior advocate for the Petitioner,
seeks leave to strike out respondent No.2 from array of
respondents, since respondent No.2 is reported to have expired and
the details of his legal heirs are not forthcoming. Leave is granted.
Necessary amendment to be carried out forthwith.

2] Heard learned counsel for the parties.

3] The challenge in this petition is to the orders dated 11th
December 2015 and 6th July 2017 made by the Small Causes Court
and the Appellate Bench of the Small Causes Court holding that the
Small Causes Court has jurisdiction to entertain and decide the suit
instituted by respondent No.1 ,i.e., R.A.D. Suit No. 1533/2013.

4] Mr. Bookwala, learned senior advocate for the petitioner, submits that in this case the Small Causes Court has no jurisdiction to entertain the suit against the petitioner, i.e., original defendant No.2, taking into consideration the provisions of Section 33 of the Maharashtra Rent Control Act, 1999 and Section 19 of the Presidency of Small Causes Court Act, 1882.

5] Mr. Bookwala submits that this is not a case of a routine suit between a landlord and a tenant. He points out that in this case, the suit premises have already been demolished and thereafter redeveloped under the scheme. He points out that there are agreements between the petitioner (defendant No.2) and the builder/landlord, i.e., defendant No.1, on basis of which, the petitioner was recognized as a tenant in respect of suit premises and further has also been declared to be eligible for benefits of rehabilitation under the scheme. Mr. Bookwala submits that in this case there is no challenge to the agreement and such challenge is even barred by law of limitation. He accordingly, submits that the Small Causes Court, in a matter of this nature, would have no jurisdiction to make any orders against the petitioner (defendant No.2) and therefore, the impugned orders warrant interference.

6] The two Courts have concurrently ruled that the suit as instituted, is one, which can be entertained by the Small Causes

Court. If the reliefs applied for in the suit are perused, then they basically relate to the declaration of the tenancy. No doubt, there are several other reliefs also applied for. However, that by itself is not a ground on which the jurisdiction of the Small Causes Court stands ousted.

7] The allegation in the plaint is that the plaintiff's father was the original tenant of the suit premises. Thereafter, on basis of some Power of Attorney, which, it was alleged was misused, the petitioner (original defendant No.2) has managed to secure recognition as a tenant and on such basis, the petitioner has also been held as eligible to benefits of rehabilitation. In sum and substance, this is essentially a suit for declaration of tenancy, because the plaintiff seeks a declaration that his father and upon demise of his father, the plaintiff is the real tenant in respect of the suit premises. At this stage, it is too premature to consider whether the reliefs applied for, can ultimately be granted on merits or not. However, on basis of contentions raised, it cannot be said that the Small Causes Court has no inherent jurisdiction to entertain the suit of this nature and therefore, the suit as against the petitioner was required to be dismissed at the threshold. There is no jurisdictional error in making of the impugned order.

8] However, it is clarified that the observations in the impugned order as well as in the present order, are only in the context of deciding the issue of jurisdiction. The Small Causes Court therefore, whilst deciding the suit on merits, need not be influenced by any such observations. The suit will have to be decided on its own merits and in accordance with law. Accordingly, all contentions of all parties are kept open for decision on merits.

9] This petition is dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)