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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8648 OF 2015**

M/s.Mahendra Builders

..Petitioner

Vs.

Mr.Sandeep N. Desai & Ors.

..Respondents

Mr.Aspi Chinoy, Senior Advocate, i/b. Mrs.Vidya Khatu for
Petitioner.

Mr.S.A. Ahmed for Respondent Nos.5, 7 and 8.

CORAM : G.S. KULKARNI, J.

DATE : 20th DECEMBER, 2017

P.C.:

Heard learned Counsel for the parties.

2. The petitioner/plaintiff is before the Court challenging the order dated 10th July 2015 passed by the learned Judge of the Small Causes Court whereby the application filed by defendant Nos.5 to 8 for framing an additional issue in regard to the jurisdiction of the Small Causes Court at Mumbai to try and entertain the suit stands allowed. The petitioner's contention is that such issue could not have been raised by respondent nos. 5 to 8 as it stood concluded by earlier orders as confirmed by this Court.

3. The basis of the application as filed before the trial

Court on behalf of defendant Nos.5 to 8 questioning the jurisdiction of the Court was on an assertion that the suit property belonged to the Mumbai Municipal Corporation and was granted on a lease to the petitioner/plaintiff by lease deed which has expired and in view of the lease having expired, the petitioner/plaintiff has no legal right to prosecute the suit and recover possession from the defendants.

4. It needs to be noted that the defendant Nos.5 to 8 are not the original defendants to the suit. The eviction Suit in question being RAE Suit No.294/663 of 1993 was instituted against the original tenant-respondent No.1 Sandip Desai, who later on inducted respondent No.4 Parvez Ghaswala and Respondent Nos.5 to 8. This is how respondent Nos.5 to 8 being found in occupation are impleaded as defendants to the suit in question. The petitioner in paragraph No.2(b) of the plaint contends that the induction of respondent nos.5 to 8 was in breach of a subsisting injunction order passed by the Small Causes Court.

5. The basis of the assertion of respondent Nos.5 to 8 before the Small Causes Court for an additional issue on

jurisdiction to be framed on the purported ground that the petitioner/plaintiff had ceased to be the landlord is not a contention raised for the first time. The original defendant namely defendant No.1 had earlier raised this contention which was subject matter of an application moved on behalf of defendant No.1 invoking Order 7 Rule 11 of the Code of Civil Procedure wherein he contended petitioner/plaintiff is not the owner of the building, and thus there was no relationship of landlord and tenant between the parties, the plaint therefore, be rejected. The said application was not successful. There was a challenge to this order by defendant No.1 before this Court in Writ Petition No.322 of 2000. A learned Single Judge of this Court dismissed the said writ petition by an order dated 15 November 2000. The Court observed that the contention as urged on behalf of the defendant No.1 to non-suit the petitioner/plaintiff on the ground that they are not the owners and landlords was wholly untenable. It was observed that the petitioner/ plaintiff had claimed in paragraph 1 of the plaint that the petitioner/plaintiff is the owner and landlord of the suit building. It is further observed that the intention on behalf of the defendant No.1 in filing such an application was to protract the proceedings. This writ petition came to be dismissed with costs of

Rs.5,000/-. In the written statement defendant No.1 had in fact accepted that the petitioner/plaintiff is the landlord of the suit premises.

6. The record indicates that thereafter again defendant No.1 had moved the trial Court, by an application under Exh.192 filed under the provisions of Order 6, Rule 16 of Code of Civil Procedure for striking off pleadings in the plaint and written statement seeking a direction for deletion of averments in the plaint where the plaintiff stated that he is owner and landlord of the suit building and that the suit is between the landlord and tenant. A reference in the written statement where the defendant No.1 had accepted that the petitioner/plaintiff is the landlord of defendant No.1 of the suit premises was also sought to be deleted. This application was also rejected by the Small Causes Court by an order dated 3rd November 2012 with a direction to the petitioner to file his affidavit for examination-in-chief. This rejection was ultimately assailed by defendant No.1 by approaching this Court in Writ Petition No.11588 of 2012. This Court by order dated 19th December 2012, dismissed the petition with costs quantified at Rs.10,000/-.

7. It is not in dispute that the petitioner/plaintiff has filed a suit before this Court against the Mumbai Municipal Corporation seeking a declaratory relief qua the lease deed and thereby asserting right, title and interest on the suit property. The petitioner on this background had moved an application below Exh.238 before the trial Court. The application was for deleting the word “owner” from additional issue No.3 which reads as under:-

“3) Whether plaintiff are owner, landlord of the suit premises ? ”

The amendment to the issue sought on behalf of the petitioner/plaintiff was as under:-

“Whether the plaintiffs are landlords of the suit premises?”

8. This application as made on behalf of the petitioner/plaintiff came to be allowed by the learned Judge of the Small Causes Court by an order dated 13th June 2014. This order came to be challenged by defendant No.1 by approaching this Court in Writ Petition No.6626 of 2014 considering the rival pleas, a learned single Judge of this Court by an order dated 25th September 2014, dismissed the writ petition.

9. There was another petition being Writ Petition No.7313 of 2014 in which the defendant No.1/petitioner therein had challenged the order dated 11th July 2014 passed by the learned Judge of Small Causes Court below application Exhibit 243, which was filed by defendant no.1, praying for exhibiting certain documents namely, (i) Letter of Intent dated 10th April 2003, (ii) letter dated 17th April 2003 issued by the Joint Municipal Commissioner of the Municipal Corporation of Greater Mumbai, (iii) Panchanama recorded by the office of Assistant Commissioner (Estates) of the Corporation. The learned Judge in paragraph 3 of the order observed that by an order dated 25th September 2014 in Writ Petition No.6626 of 2014, it was already held that the learned trial Judge has rightly deleted the issue of ownership and in view thereof, no useful purpose will be served by producing these documents for the purpose of showing that plaintiff is divested of title. Accordingly, the said writ petition also came to be dismissed.

10. In the contention of the petitioner/plaintiff, now this time, defendant Nos.5 to 8 intentionally neglecting the previous orders and the record of defendant No.1 earlier attempting to non-suit the petitioner/plaintiff, by filing applications raising the issue

of ownership, have filed the application in question (below Exh.262), making a prayer that an additional issue be framed namely “Whether the Small Causes Court has jurisdiction to try and entertain the suit”. It is contended that the basis of this application is the same as was urged by defendant No.1 in the previous proceedings namely that the petitioner/plaintiff is not the owner and it is the Municipal Corporation which is the owner of the suit premises, which came to be rejected by this Court. Thus the application ought not to have been allowed by the impugned order dated 10th July 2015 thereby accepting the prayers of defendant Nos.5 to 8 to frame an issue of jurisdiction. Learned Senior Counsel for the petitioner/plaintiff in assailing the impugned order has drawn my attention to the various orders as noted above to support the above contention. It is submitted that an attempt on the part of defendant Nos.5 to 8 in asserting such a plea was a fresh attempt on the part of these defendants to delay the adjudication of the suit which was instituted in the year 1993. Attention of the Court is drawn to the order passed by this Court dated 15th November 2000 where specific observations are made in paragraph 4 that the entire attempt to raise such issue, after defendant No.1 had admitted that the petitioner is landlord of the

suit premises was only to protract the proceedings. It is submitted that admittedly defendant Nos.5 to 8 are not the original defendants and despite an injunction operating against defendant No.1, defendant Nos.5 to 8 have been inducted in the suit premises. Thus defendant Nos.5 to 8 cannot raise such a plea which original defendant i.e. defendant No.1 had attempted to raise and had failed. It is submitted that the approach of the trial Judge in passing the impugned order is also casual in as much as the impugned order has been passed in complete disregard to the various orders passed by this Court in previous proceedings adopted by defendant No.1. It is submitted that defendant No.1 having earlier raised such issue, it was not permissible for defendant Nos.5 to 8 to raise similar issues, on the same foundation and decided by this Court in the order dated 15th November 2000 in Writ Petition No.322 of 2000. It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

11. On the other hand, learned Counsel for the defendant Nos.5 to 8 has opposed the submissions as urged on behalf of the petitioner/plaintiff. It is submitted that there is no

error on the part of the learned trial Judge in passing the impugned order to frame the issue of jurisdiction. It is submitted that Section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 clearly provides that the provisions of the Act would not be applicable to the Government premises. It is submitted that the suit premises belong to the Municipal Corporation and therefore, the petitioner/plaintiff can never be the landlord and thus, would not be entitled to prosecute the suit in question and on this background, it was necessary for the Court to frame issue in regard to the jurisdiction of the Court to try and entertain the suit. It is submitted that the Court is vested with inherent powers to examine whether it has jurisdiction to try and entertain the suit. Learned Counsel for the defendant Nos.5 to 8 seeks dismissal of the writ petition on the above averments.

12. I have heard learned Counsel for the parties. With their assistance, I have perused the different orders which are placed on record and the applications in question.

13. The suit in question (RAE Suit No.294/663 of 1993) was instituted by petitioner/plaintiff in the year 1993. It is

not in dispute that the Suit came to be instituted initially against defendant No.1. In the written statement as filed on behalf of the defendant No.1, defendant No.1 categorically admitted that the petitioner/plaintiff is the landlord. This has also been noted in the orders passed by this Court and as noted above when the issue of the petitioner/ plaintiff being not an owner was raised by defendant No.1. Again it is not in dispute that defendant Nos.5 to 8 came to be subsequently impleaded as defendants to the suit in view of their occupation of the suit premises which according to the petitioner/plaintiff is stated to be illegal. Defendant No.1 is not before the Court and is not contesting this petition, nor has appeared in the application in question before the trial Court. Defendant Nos.5 to 8 however, having come in occupation of the premises without having any privity of contract or any written permission being granted in their favour by the petitioner/plaintiff to occupy the premises or for that matter from the Municipal Corporation are asserting the issue of jurisdiction. In my opinion, there is much substance in contention as urged on behalf of the petitioner/plaintiff that the issue of ownership of the suit premises fell for consideration of the trial Court in the previous proceedings as noted above. The Court in the said proceedings accepted the

fact that the petitioner/plaintiff was the landlord of the suit premises. Thereafter even in the subsequent proceedings which reached this Court leading to the order dated 25th September 2014 in Writ Petition No.6626 of 2014 this Court referring to the rejection of similar pleas as taken on behalf of the defendant No.1, had dismissed the petition as filed by defendant No.1.

14. A perusal of the impugned order clearly indicates that the learned trial Judge has failed to consider that earlier similar issues were raised by the defendant no.1 questioning the ownership of the petitioner/plaintiff so as to non-suit the petitioner/Plaintiff. As noted above, in the impugned order there is no consideration of the orders which came to be passed in the earlier proceedings as also orders passed by this Court and the consequences the said orders entail. The learned trial Judge is therefore, in clear error in allowing the application of defendant nos.5 to 8 holding that the additional issues in regard to the jurisdiction of the Small Causes Court to try the suit be framed on the foundation that the petitioner/plaintiff is not the owner.

15. Defendant Nos.5 to 8 are subsequently inducted

in the suit premises and it cannot be overlooked that it is their interest to prolong the proceedings of the suit. In any event, it is not the case of defendant Nos.5 to 8 that they are the tenants of the Bombay Municipal Corporation or that they are inducted by the Bombay Municipal Corporation. If this is the factual position and if the petitioner/plaintiff is a landlord within the meaning of Sub-Section 3 of Section 5 of the Maharashtra Rent Control Act, 1999 and that the original defendant namely defendant No.1 had admitted the petitioner/plaintiff as the landlord and was paying rent to the petitioner/plaintiff, then the respondent Nos.5 to 8 could not have again raised the issue that the petitioner/plaintiff is not the landlord being not the owner of the premises and seek framing of an issue on the jurisdiction of the Court to try and entertain the suit. In any event, the jurisdiction of the Court would be limited to determine the dispute in the suit between the landlord (petitioner/plaintiff) and the defendant no.1 (as it originally stood) and now the added defendants, and not in deciding an issue of title of the petitioners. The impugned order, in my opinion, thus cannot be sustained. It is illegal and perverse. The impugned order is accordingly quashed and set aside.

16. The learned trial Judge is directed to adjudicate the suit as early as possible but in any event within a period of 6 months from today. The parties are directed to co-operate in the adjudication of the proceeding.

17. In case the trial Judge is of the opinion that there are attempts as made on behalf of any of the defendants to protract the proceeding, the learned Judge shall impose costs, as mandated by the provisions of the Code of Civil Procedure.

18. Writ Petition is accordingly allowed in the aforesaid terms however, with a costs quantified at Rs.50,000/- to be paid by defendant Nos.5 to 8 to petitioner/plaintiff within four weeks from today. Costs is a condition precedent.

[G.S. KULKARNI, J.]