

Sequeira

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

WRIT PETITION NO. 1025 OF 2017

State Bank of India.

.. Petitioner

Vs

Mrs.Gayatri M.GopalDas & ors.

.. Respondents

Mr.S.S.Kanetkar, for the Petitioner.

Mr.Surel Shah a/w Swapnil Gupte i/b Hariani & Co., for Respondent
Nos.1 to 4.

Coram : N.M.Jamdar, J.

Date : 16 March 2017.

Oral Order :

The Petitioner has challenged the concurrent orders passed by the learned Small Causes Court Judge, Pune and the learned District Judge, Pune rejecting the application taken out by the Petitioner in respect of jurisdiction of the Small Causes Court and deciding the preliminary issue accordingly.

2. The Respondents have filed a Suit No.415 of 2010 seeking a monetary relief from the Petitioner as well as the relief of possession of the suit premises. According to the Respondents, the Petitioner was put in possession of the suit premises as a lessee. The period was extended from time to time on certain understanding between the parties regarding enhanced compensation / rent to be

paid. Since the Petitioner did not vacate nor paid the amount, the suit had to be filed. Written statement was filed by the Petitioner and an application was also filed by the Petitioner on 13 February 2012 for framing a preliminary issue as regards jurisdiction. The preliminary issue was framed and the learned Small Causes Court Judge, by order dated 2 January 2015 held that the suit was maintainable. By order dated 27 June 2016 learned District Judge, Pune, confirmed the order passed by the learned Small Causes Court, Judge.

3. The learned counsel for the Petitioner submitted that perusal of the plaint and the correspondence annexed thereto would show that the Respondents are claiming an amount which is outside the leave and license / lease agreement between the parties and what the Respondents are essentially seeking is enhancement of the compensation itself. He submitted that such suit is barred under clause 7 and 17 of schedule II to the Provincial Small Cause Courts Act, 1887. The learned counsel submitted that the perusal of the plaint would show that it is the case of the Respondent-landlord themselves that the amount which is more than the license fee / rent which would clearly mean that the suit is only for purpose of enhancement. The learned counsel submitted that the possession of the suit premises is already handed over and therefore, the prayer of injunction does not survive. The learned counsel for the Respondents relied upon the averments made in the plaint.

4. Both the Courts have concurrently found that the suit is maintainable in the Small Causes Court. Since the Petitioner appears to have invoked the provisions of Order VII Rule 11 of the Code of Civil Procedure, the averments made in the plaint will have to be looked into. In the plaint it is categorically averred in paragraph 7 and 9 that the Petitioner had accepted the enhancement. In view of these averments made in the plaint it cannot be said that the view taken by both the Courts is erroneous and conclusion cannot be straightaway drawn that the suit is not maintainable.

5. Whether the amount claimed by the Respondents in the suit is outside the terms of tenancy / license or it had become part of the conditions of the lease / license, is a question of fact to be decided. However, even though I am not interfering with the impugned orders, it is made clear that if on assessment of evidence the Small Causes Court comes to the conclusion that an entirely independent claim is made outside the terms of tenancy and a claim purely for enhancement is sought for, it will be open for the learned Small Causes Court to decide the question of jurisdiction. It will be also open to the Respondents to contend, as is sought to be done in this case relying on the decision in the case of *Bindeshri Prasad Vs Vishwanathdas - 1913 Indian Cases 859* that the continuation of tenant in occupation of the premises will have to be considered as implied acceptance of the claim of enhancement. Therefore, the issue

as to the exact nature of the claim made by the Respondent-landlord would depend on the assessment of evidence, which question is kept open to be decided at the time of trial. The Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)