

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3988 OF 2017

Mr. Gredon Halge and Others ..Petitioners

Vs.

Bombay Diocesan Trust Association

Pvt Ltd (BDTA Pvt Ltd) and Another ..Respondents

Mr. Abhijeet Marathe, for the Petitioners.

Mr. Pradeep J. Thorat a/w Ms Diya Jadhav, for Respondent No.1.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JUNE 29, 2017.

P. C.:

This Writ Petition has been filed under Article 227 of the Constitution of India seeking to quash and set aside the impugned order dated 1st October, 2016 passed below Exhibit-31 in R. A. E. Suit No.192/308/2014.

2 Very few facts need to be noted to dispose of this Writ Petition. For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court. The Petitioners herein were Defendant Nos.1 to 3 before the Trial Court. Defendant No.4

(Respondent No.2 herein) before the Trial Court was the alleged unlawful sub-tenant of Defendant Nos.2 and 3. Respondent No.1 is a company which is also a Trust registered with the Charity Commissioner and was the Original Plaintiff. It is the Plaintiff's case that Defendant Nos.1 to 3 are their tenants in relation to Rooms 3 and 4 on the ground floor of a building known as Birdwood Hostel, Upper Colaba Road, Colaba, Mumbai- 400005 (hereinafter referred to as the "suit premises"). Since the Plaintiff bonafide required the suit premises for its own use and occupation and was also of the view that the Suit premises were not being used by Defendant Nos.1 to 3, the Plaintiff filed an eviction suit against Defendant Nos.1 to 3 namely R. A. E. Suit No.192/708/14 . Thereafter the Plaint was amended and an additional ground of unlawful subletting incorporated as it was the case of the Plaintiff that Defendant Nos.1 to 3 had unlawfully sub-let the suit premises to Defendant No.4. In this Suit (R. A. E. Suit No. 192/708/14), the Plaintiff filed an injunction notice. In reply to the injunction notice, Defendant Nos.1 to 3 raised a preliminary objection on the issue of jurisdiction as under:-

"2.The Hon'ble Court does not have jurisdiction to try, entertain and dispose of the present suit. The suit is not between landlord and tenant. The suit is not instituted by Landlord, Bombay Diocesan Trust Association Pvt Ltd ("BDTA"). Suit is instituted by

Mr. Rajnikant R. Salvi, fraudulently and wrongfully in the name of BDTA, and in collusion with the persons named as directors and trustee of BDTA in the alleged Board Resolution dated 30th June 2012 (Exhibit-B to the plaint).

3. There is no landlord-tenant relationship between said Mr. Salvi, his co-conspirators, on one hand, and the Defendants on the other hand. Such persons do not have any authority on behalf of BDTA. These persons are neither directors nor trustees of BDTA. Their names are not recorded as such either with the Office of the Charity Commissioner, Mumbai or with the Registrar of Companies. The board resolution based on which Mr. Salvi has purported to have filed the suit is thus a forged and unlawful document. Annexed hereto and marked as Exhibit A is a copy of the extract of Schedule I to the Register of Trust maintained by the Office of the Charity Commissioner, Mumbai. I crave leave to refer to and rely upon the extract of the record from the Office of the Registrar of Companies, Maharashtra.

4. Since the suit has not been filed by the real landlord, the Hon'ble Court does not have jurisdiction to try, entertain and dispose of the present suit under the provisions of the Maharashtra Rent Control Act, 1999 read with Presidency Small Causes Court Act 1882. Defendants pray that the Hon'ble Court frames a preliminary issue on the jurisdiction of the Hon'ble Court under section 9A of the Code of Civil Procedure 1908.

5. Suit is purportedly filed in the name of a company formed and registered under Indian Companies Act 1913. A company has an independent juridical entity, separate from its members. A company has perpetual succession, capable of suing and being sued in its own name. However, since the company is an artificial person, it requires a natural person to carry out its business and functions. Hence, it is required to prove the existence, and the validity of the power given to its representative to act on its behalf. These are jurisdictional facts that confer jurisdiction on the rent court. If either of these jurisdictional facts are not proved, the Court's jurisdiction is barred. In the facts and circumstances of the case, such issue can, and ought to, be framed and tried as a preliminary issue. All the ingredients required under section 9A of the Code of Civil Procedure 1908 are fulfilled."

3 Since it was pleaded that there was no landlord tenant relationship between the parties, the Court framed a preliminary issue of jurisdiction by its order dated 21st November, 2011. The parties were also granted liberty to lead evidence, if any, on this preliminary issue.

4 Pursuant to this liberty, Defendant Nos.1 to 3 led evidence in support of their contention that the Small Causes Court did not have jurisdiction to entertain the suit filed by the Plaintiff. The Plaintiff, on the other hand, chose not to lead any evidence. Once this exercise was complete, the parties were heard and the Small Causes Court by the impugned order dated 1st October, 2016 held that it had jurisdiction to try and decide the suit. It is aggrieved by this order that the Petitioners are before me in my equitable, discretionary and extra ordinary jurisdiction under Article 227 of the Constitution of India.

5 In this factual backdrop Mr. Marathe, the learned counsel appearing on behalf of Defendant Nos. 1 to 3 submitted that the impugned order suffers from some serious infirmities and irregularities. He submitted that the Trial Court has held that it

has jurisdiction on the basis of the averments in the Plaint alone and has not considered the evidence led by Defendant Nos.1 to 3. He submitted that this approach of the Trial Court was totally incorrect as under Section 9A the parties are at liberty to lead evidence, if they so desire and once that is done the entire evidence has to be considered before a finding can be given on the issue of jurisdiction under Section 9A of the CPC. He submitted that in the facts of the present case this has not been done and evidence led by Defendant Nos.1 to 3 has not been considered at all. He submitted that this is more so as the issue of jurisdiction once decided under Section 9A attains finality and cannot be agitated again at the hearing of the Suit, if the Court holds that it has jurisdiction. Looking to all these facts, the learned counsel submitted that the impugned order clearly suffers from an error apparent on the face of the record that requires my interference under Article 227 of the Constitution of India.

6 On the other hand, Mr. Thorat, the learned counsel appearing on behalf of the Plaintiff submitted that there is absolutely nothing wrong in the order passed by the Trial Court. He submitted that looking to the averments in the reply to the

injunction notice, it was clear that what was being challenged was the authority of one Mr. Rajnikant R. Salvi as well as the so called Directors of the Plaintiff to file the suit. It was on this basis that Defendant Nos.1 to 3 contended that there was no landlord-tenant relationship. In other words, it was the contention of Defendant Nos.1 to 3 that the suit had been filed not by the landlord but ostensibly in the name of the landlord. Mr. Thorat submitted that it is one thing to say that the Small Causes Court does not have jurisdiction because there is no landlord tenant relationship and it is wholly another to contend that the suit filed on behalf of the Plaintiff "who is the landlord" had not been filed with the proper authority or by the correct people. If the Defendants are correct in their contention then the suit would ultimately fail on the ground that the persons instituting the suit on behalf of the Plaintiff-Tenant had no authority to do so. That is totally different from contending that there is no landlord-tenant relationship between the Plaintiff and Defendant Nos.1 to 3. He submitted that the landlord-tenant relationship between the Plaintiff trust, namely, the Bombay Diosisan Trust Association Pvt Ltd (BDTA Pvt Ltd) and Defendant Nos.1 to 3 is admitted. This being the case the order of the Trial Court cannot be faulted and requires no

interference in my limited jurisdiction under Article 227 of the Constitution of India. He therefore submits that consequently there is no merit in this Writ Petition and the same ought to be dismissed.

7 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I have also given very careful consideration to the impugned order dated 1st October, 2016. To understand this controversy, one must carefully look at the contention raised by Defendant Nos.1 to 3 in their reply to the injunction notice. Firstly, the contention raised is that the suit is not between the landlord and tenant. It is stated that the suit is not instituted by BDTA Pvt Ltd but is instituted by Rajnikant R. Salvi fraudulently and wrongfully in the name of BDTA Pvt Ltd and in collusion with the persons named as directors and trustees of BDTA Pvt Ltd as set out in the Board Resolution dated 30th June, 2012. This contention proceeds on the basis that admittedly Rajnikant R. Salvi or the alleged Directors as mentioned in the Board Resolution dated 30th June, 2012 are not landlords of Defendant Nos.1 to 3 but in fact it is BDTA Pvt Ltd who is the landlord. Mr.

Marathe has very fairly stated before me that it is not in dispute that there exists a landlord-tenant relationship between BDTA Pvt Ltd (the Plaintiff) and Defendant Nos.1 to 3. He however submitted that the suit though filed in the name of BDTA Pvt Ltd, the same was actually at the instance of Mr. Rajnikant R. Salvi who fraudulently and wrongfully filed the same in the name of BDTA Pvt Ltd. This being the case, he submitted that there is no landlord tenant relationship between Rajnikant R. Salvi and Defendant Nos.1 to 3. This evidence was not at all considered by the Trial Court as is ex-facie clear from the impugned order, was the submission of Mr. Marathe.

8 On this aspect I am unable to agree with the learned counsel. It is an admitted fact before me that the suit has been filed by the BDTA Pvt Ltd against Defendant Nos.1 to 3 and thereafter by virtue of an amendment also against Defendant No.4. The said BDTA Pvt Ltd is the Plaintiff in the suit. As far as BDTA Pvt Ltd and Defendant Nos.1 to 3 are concerned, it is admitted that there exists a landlord-tenant relationship. As correctly submitted by Mr. Thorat, it is one thing to say that there exists no landlord-tenant relationship between BDTA Pvt Ltd and

Defendant Nos.1 to 3 and it is wholly another to contend that the persons who have filed the suit on behalf of BDTA Pvt Ltd did not have the power and/or authority to do so or the suit has been illegally or wrongfully filed in its name. That still would not divest the Small Causes Court of its jurisdiction. Ultimately, if the Plaintiff is unable to establish that the suit has been properly and correctly instituted, it would fail, but certainly not on the ground of jurisdiction. Looking at it from this angle, I do not find that the impugned order requires my interference under Article 227 of the Constitution of India.

9 It is true that the impugned order proceeds on the basis that the jurisdiction ought to be decided on the basis of the averments in the Plaint and not on the basis of the defence raised. I do not think that these observations of the Trial Court are strictly correct considering that the Trial Court was deciding a preliminary issue of jurisdiction under Section 9A of the CPC. It was not deciding an application for rejection of the Plaint under Order 7 Rule 11 or deciding a preliminary issue under Order XIV Rule 2 of the CPC. When the Court is deciding preliminary issue under Section 9A, the Court can certainly look at all evidence that

is led by parties to come to a finding whether it has jurisdiction or not. To that extent, I do not think that the observations of the Trial Court are in accordance with law.

10 Having said that, on the facts that have been disclosed before me, it is clear that the Small Causes Court has jurisdiction to hear and try the Suit filed by the Plaintiff (namely BDTA Pvt Ltd) as the relationship of landlord and tenant between the Plaintiff and Defendant Nos.1 to 3 is clearly admitted. In this view of the matter, and for all the foregoing reasons, I find no reason to interfere with the impugned order. The Writ Petition is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

11 Needless to clarify that the contentions raised regarding the authority and the power to institute the suit on behalf of the Plaintiff, is kept open to be agitated at the hearing of the suit and this order shall not preclude the Defendants from raising these contentions at the trial of the Suit.

(B. P. COLABAWALLA, J.)