

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.12254 OF 2017

Aquila Bashir Shaikh	]	Petitioner
Vs.		
Raju Laxman Pyaram	]	Respondent
.....		
Mr. Jaydeep Deo, for Petitioner.		

.....
CORAM : R.G. KETKAR, J.

DATE : 17th OCTOBER, 2018.

P.C:

Heard Mr. Deo, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 12th March, 2009 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.290 of 2007 as also the judgment and decree dated 19th September, 2017 passed by the learned Ad-hoc District Judge-1, Pune in Civil Appeal No.307 of 2009. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter, referred to as 'plaintiff' under section 16 (1) (b) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). The plaintiff instituted suit, *inter alia*, contending that one room admeasuring 12'x10' situate on the ground floor, House No. 135 at Solapur Bazar within the limits of Pune Cantonment Area, Pune – 411 001 (for short 'suit premises') was let out to the defendant. Without obtaining written permission of the plaintiff, the defendant constructed toilet admeasuring 5'x5' and one room admeasuring 7'x10'. He, therefore, sought possession of the suit premises along with encroached portion.

3. The defendant resisted the suit by filing written statement dated 15th March, 2008 at Exhibit 16, *inter alia*, contending that the provisions of the Maharashtra Rent Act are not applicable as the suit premises is situate in Pune Cantonment Area. It was further contended that alleged encroachment made by the defendant is on the land owned by Pune Cantonment Board. The plaintiff, therefore, cannot claim possession of the premises which are not rented out to the defendant. The Small Causes Court will have no jurisdiction in respect of the premises which are alleged to have been encroached by the defendant. In the alternative, the defendant contended that in case, the Court comes to the conclusion that the defendant has made permanent construction, the same was made 4 years prior to filing of the suit and with the permission of the plaintiff and after the said construction, the plaintiff had enhanced rent of the suit premises to Rs. 50/- per month.

4. On the basis of the pleadings of the parties, the learned trial Judge framed issues. The parties went to trial. By the impugned orders, the Courts below decreed the suit.

5. In support of this Petition, Mr. Deo submitted that the Courts below are not justified in decreeing the suit. Firstly, Maharashtra Rent Act is not applicable as the suit premises is situate in cantonment area. Secondly, the alleged encroachment is made on the land belonging to Pune Cantonment Board. The Small Causes Court has no jurisdiction to deal with the claim in respect of alleged encroachment on the land belonging to Cantonment board.. Mr. Deo has invited my attention to the admissions given by the plaintiff. In the cross-examination, the plaintiff admitted that the area where the toilet and additional room is constructed is owned by the Pune Cantonment Board. He, therefore, submitted that the Petition requires consideration.

6. I have considered submissions advanced by Mr. Deo. I have also perused the material on record. In so far as contention that Maharashtra Rent Act is not applicable as the suit premises is situate in Pune Cantonment Area is concerned, I do not find any merit in this submission. By order dated 24th September, 2018 in C.R.A. No.249 of 2018 [Shireen Dady Adenwalla Vs. Yasmin Dinyar Ilavia], I have already held that the provisions of the Maharashtra Rent Act are applicable to the premises situate in Pune Cantonment Area.

7. This brings me to the merits of the case. After perusal of the material on record, I find that the Courts below after appreciating the evidence on record have concurrently held that the defendant has encroached upon portion to the extent of 4'x5' by 18'x5' and 5.9' x 4.7 inches. The learned trial Judge has considered this aspect in paragraphs 7 and 8. In paragraph 7, the learned trial Judge has considered admissions of the defendant in her cross-examination. After considering the admissions given by the defendant, the learned trial Judge observed in paragraph 8 that the defendant has not sought permission of the plaintiff for making construction of W.C and room. The construction of W.C and room is appurtenant to the suit premises and it is in the use of the defendant as a tenant. The defendant is using W.C which has been constructed by her at the left side of the suit premises and it is also next to the suit premises. The learned trial Judge, therefore, held that the plaintiff established that the defendant has made permanent construction of W.C and room at the suit premises without written permission of the plaintiff. In so far as contention of the defendant that the provisions of Maharashtra Rent Act are not applicable is concerned, the learned trial Judge has dealt with this aspect in paragraphs 9 and 10 and held that the provisions of Maharashtra Rent Act are applicable.

8. In so far as the District Court is concerned, in paragraph 8, the learned District Judge referred to the admissions given by the defendant in the cross-examination. In paragraph 10, the learned District Judge observed that the defendant has made encroachment because of her tenancy rights in the tenanted premises. Whatever act done by her is in the capacity of a tenant and the same is equally applicable in case of encroachment. The learned District Judge also held that the provisions of the Maharashtra Rent Act are applicable to Pune Cantonment Area.

9. Mr. Deo submitted that in view of the admissions given by the plaintiff during cross-examination, it is manifest that encroachment made by the defendant namely construction of toilet and additional room is on the land belonging to Cantonment Board and, therefore, Small Causes Court has no jurisdiction to entertain and try the suit. There is no relationship of landlord and tenant between the parties. I do not find any merit in this submission. Section 33 (1) reads thus;

33. Jurisdiction of Courts. (1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai.

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, (IX of 1887), such court, and

(c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises **and to decide any application made under this Act (other than the applications which are to be decided by the**

State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question”.

(emphasis supplied)

10. In the case of **Sushila Kashinath Dhonde Vs. Harilal Govindji Bhogani, 1969 (3) Supreme Court Cases 223**, the Apex Court considered the provisions of sections 18 and 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). Section 18 (2) gives a right to “any person”, who has paid one or other of the types of amounts mentioned therein, to recover from the landlord those amounts. That gives a right to a tenant who may have paid any of those amounts to deduct such amounts from the rent payable by him to a landlord. “Any person”, mentioned in sub-section (2) of section 18 will not have the relationship of a tenant to the landlord from whom he seeks to recover the amount. Nevertheless, he can certainly seek to recover the amount as a claim arising out the Act in a Court of Small Causes under section 28. Sub-section (3) of Section 18 which permits a payment being made to a landlord for the purpose mentioned therein, refers to “any payment made under any agreement by any person to a landlord by way of a loan”.

11. After extracting section 18 (3), the Apex Court observed in paragraph 13 thus,

“Having due regard to the aspects mentioned above and the provisions of Sections 18 (3) and 28 (1), in our opinion it is not necessary that there should be a relationship of landlord and tenant in respect of all the matters covered by section 28 (1) of the Act, so as to give jurisdiction to the Court of Small Causes. No doubt, one type of action contemplated under that section, viz., a suit or proceeding for recovery of rent or possession of any premises to which any of the provisions of

Part II apply may be between a landlord and a tenant; but in respect of the other matters dealt with in that sub-section, it is not necessary that the relationship of landlord and tenant should exist between the parties before the Court”.

12. In paragraph 18, the Apex Court referred to the decision of **Importers and Manufacturers Ltd Vs. Pheroze Framrose Taraporewala, AIR 1953 Supreme Court 73**. In that case, the landlord had instituted the suit against his tenant and the sub tenant for recovery of possession of the suit premises as also for compensation in the Court of Small Causes at Mumbai. The landlord alleged that the tenant had sublet the premises without his previous consent and contrary to the terms of the tenancy.. The suit was decreed in favour of the plaintiff. The defendants filed appeal and raised additional plea that the Court of Small Causes had no jurisdiction to entertain the suit in so far as it related to second defendant, the sub lessee. The Appellate Court dismissed the appeal. Sub lessee challenged that order in Revision which was also dismissed. The Apex Court extracted observations made in that decision and observed thus;

“Section 28 confers jurisdiction on the Court of Small Causes not only to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises but also 'to deal with any claim or question arising out of this Act or any of its provisions'. There is no reason to hold that 'any claim or question' must necessarily be one between the landlord and the tenant. In any case, once there is a suit between a landlord and a tenant relating to the recovery of rent or possession of the premises the Small Causes Court acquires the jurisdiction not only to entertain that suit but also 'to deal with any claim or question arising out of the Act or any of its provisions' which may properly be raised in such a suit.”

In the above extract, this Court, in our opinion, has clearly laid down that when the Court of Small Causes under Section 28 of the Act is invited “to deal with any claim or question arising out of this Act or any of its provisions” the relationship between the parties to such proceedings need not be that of a landlord and tenant. Mr. Hattangadi

no doubt stressed the latter part of the observations in the above extract wherein, according to him, this Court has emphasised that in that particular case the suit was between the landlord-plaintiff and the first-defendant tenant and, in consequence, held that the Small Causes Court had jurisdiction. In our opinion, this is not a proper understanding of the principle enunciated by this Court. This Court has categorically held that the claim or question which the Small Causes Court is called upon to consider need not necessarily be between a landlord and a tenant. After having so held, this Court gave only an additional reason for upholding the jurisdiction of the Small Causes Court on the ground that the suit was between the landlord and the first-defendant who was admittedly a tenant”.

13. After perusing the material on record, I do not find that the Courts below committed any error in decreeing the suit. The defendant is not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendant is also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

14. At this stage, Mr. Deo orally applies for stay of eviction decree for a period of 12 weeks from today. He assures that within 2 weeks from today, defendant and all adult family members residing in the suit premises will furnish undertaking incorporating therein that,

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interest nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interest nor part with possession of the suit premises;

- (d) in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff.

15. In view thereof, notwithstanding dismissal of the Petition, subject to the defendant filing undertaking in the aforesaid terms within two weeks from today, eviction decree shall not be executed for the period of 12 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case the defendant commits breach of any of the conditions of the undertaking, interim order shall stand vacated without further reference of the Court. In case, defendant is unable to obtain suitable orders from higher Court within a period of 12 weeks and does not hand over possession of the suit premises to the plaintiff, the plaintiff will be at liberty to proceed with the matter in accordance with law.

16. List the Petition for reporting compliance on **21st November, 2018.**

[R.G. KETKAR, J.]