

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION [STAMP] NO.15282 OF 2019

Royal Orchid Hotels Ltd.	]	Applicant
Vs.		
Rock Realty Pvt. Ltd.	]	Respondent

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Mr. Yakshay Chedda a/w Pooja Tated i/b Parinam Law Associates, for the Applicant.

Mr. S.M. Oak i/b Amol P. Mhatre a/w Prasad P. Kulkarni, Advocates for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 25th JUNE, 2019.

P.C.

Heard Mr. Chedda, learned Counsel for the applicant and Mr. Oak, learned Counsel for the respondent, at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to as 'defendant' has challenged the judgment and order dated 27th March, 2019 passed by the Additional Judge Small Causes Court, Pune below Exhibit 20 in Civil Suit No.99 of 2018. By that order, the learned Judge rejected the application made by the defendant raising issue of jurisdiction of the Small Causes Court to entertain and try the suit.

3. The respondent, hereinafter referred to as 'plaintiff' has instituted suit against the defendant for recovery of possession of 4th to 9th floor admeasuring about 71,420 square feet in the building known as 'Marisoft

Annexe” situate within the limits of Sub-Registration District Taluka Haveli, District Pune and within the limits of Pune Municipal Corporation, Wadgaon Sheri, bearing Survey No.15/1, 15/2/1, 15/3, 15/4, 15/5, 15/6 (for short 'suit property'). The plaintiff has sought perpetual injunction restraining the defendant from parting with possession of the suit property or any part thereof.

4. During pendency of the suit, the plaintiff took out application for temporary injunction. The defendant filed say and written statement opposing the application as also the suit. The defendant also took out application Exhibit 20, *inter alia*, contending that the dispute raised by the plaintiff is a commercial dispute. In view of section 2(1) (c) (vii) of the Commercial Courts Act, 2015 (for short 'Act'), the Small Causes Court has no jurisdiction to entertain and try the suit. The dispute raised by the plaintiff is required to be referred to the Commercial Court constituted under the Act.

5. The plaintiff filed reply opposing the application. By the impugned order, the learned trial Judge rejected the application. It is against this order, the defendant has instituted the present application.

6. In support of this application, Mr. Chheda contended that having regard to the pleadings of the parties as also documents relied by the plaintiff, dispute raised by the plaintiff is a commercial dispute. He relied on section 2(1) (c) (vii) of the Act to contend that dispute is required to be referred to the Commercial Court constituted under the Act and the Small Cause Court has no jurisdiction to entertain and try the suit. He reiterated the submissions that were advanced before the trial Court.

7. On the other hand, Mr. Oak relied on section 11 of the Act to contend that the Commercial Court or a Commercial Division is precluded from entertaining or deciding any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force. He relied on section 16 of the Provincial Small Causes Courts Act, 1887 (for short 'P.S.C.C Act') to contend that a suit cognizable by a Court of small Causes cannot be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. He submitted that the suit instituted by the plaintiff is for recovery of possession of the premises situate within the municipal limits of Pune Municipal Corporation, and therefore, the suit is rightly instituted in the Small Causes Court.

8. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the plaintiff has instituted suit contending that there is relationship of licensor and licensee between the parties. The suit is instituted for recovery of possession of the suit premises. Section 16 of the P.S.C.C Act reads thus;

“16.Exclusive jurisdiction of Courts of Small Causes._Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable”.

Section 26 of the P.S.C.C Act reads thus;

“26.Suits or proceedings between licensors and licensees or landlord and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes._ (1)Notwithstanding anything contained

elsewhere in this Act, but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1949, or the Maharashtra Housing and Area Development Act, 1976, or any other law for the time being in force, apply”.

9. A conjoint reading of sections 16 and 26 of the P.S.C.C Act leaves no manner of doubt that the suit instituted for recovery of possession of immovable property between the licensor and licensee or a landlord and tenant can be tried exclusively by the Small Causes Court constituted under the P.S.C.C. Act.

10. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed.

[R.G. KETKAR, J.]