

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2281 of 2020

Mr.Rahul Subhash Bothra.

...Petitioner

vs.

Smt.Karjala Ashalata Naidu.

...Respondent

Mr.Abhishek R.Avchat, for the Petitioner.

Mr.S.L.Babar, AGP for the State.

Mr.Tejas D.Deshmukh, for the Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 5 August 2020
(through Video Conferencing)**ORAL JUDGMENT**

1. Rule returnable forthwith. Respondent waives service. By consent of the parties heard finally.
2. Challenge in this petition is to an order dated 23 April 2019 passed by the learned Civil Judge Junior Division, Ghodnadi, Shirur, Pune. By the impugned order an application below Exhibit 14 as filed by the respondent-defendant under Section 10 of the Code of Civil Procedure for stay of the suit in question, is allowed in view of the pendency of a prior suit between the parties being Special Civil Suit no.1213 of 2014 filed by the respondent before the Court of Civil Judge Senior Division, Pune.
3. Learned Counsel for the petitioner in assailing the impugned order would contend that the impugned order cannot be sustained in law inasmuch

as the jurisdiction of both the Courts in entertaining the respective suits before these respective Courts is different. He submits that the jurisdiction of the Court in the suit in question (Regular Civil Suit no.41 of 2015) arises under the provisions of the Provincial Small Cause Courts Act, 1887 read with the Maharashtra Rent Control Act being a suit filed for eviction of the respondent-defendant-tenant, whereas jurisdiction of the Court in the prior suit which is filed by the respondent before the Court of Civil Judge Senior Division is the jurisdiction of a Civil Court under Section 9 of the Code of Civil Procedure being a declaratory suit praying for a declaration in regard to the sale deed as also lease deed in question as entered between the parties. He submits that on this basic premise the impugned order cannot be sustained. Learned counsel for the petitioner has made an alternate submission that the Court should exercise powers under Section 24 of the Code of Civil Procedure and transfer the suit in question to be heard alongwith Special Civil Suit no.1213 of 2014 pending on the file of Civil Judge, Senior Division, Pune.

4. On the other hand Mr.Deshmukh, learned Counsel for the respondent would not dispute that the suit in question as seen from the plaint is a suit between the landlord and tenant. He however, submits that the plea of both the parties in these suits would arise on the same bundle of facts, namely that the defence of the petitioner/plaintiff in the suit before the learned Civil Judge Senior Division is not different from what is being asserted in the present suit. He therefore, submits that the learned trial Judge has appropriately considered this position in passing the impugned order and has rightly stayed the petitioner's suit till the decision of the respondent's Special Civil Suit no.1213 of 2014.

5. Having heard learned Counsel for the parties, at the outset it needs to be observed that these are two suits pending between the same parties. The first suit being Special Civil Suit No.1213 of 2014 was filed by the respondent inter alia praying for a declaration that the sale deed and the lease deed in regard to the suit premises are illegal, null and void. The second suit is the suit in question filed by the petitioner espousing a cause of action which would accrue to a landlord against a tenant (petitioner) falling within the Maharashtra Rent Control Act, 1999 wherein the petitioner/plaintiff has prayed for eviction of the respondent solely on the basis of the lease deed stated to be executed between the parties. Admittedly the jurisdiction of the learned trial Judge in the suit in question is the exclusive jurisdiction conferred under Section 16 of the Provincial Small Cause Courts Act, 1887 read with Section 33 of Maharashtra Rent Control Act being a dispute between the landlord and tenant, which is not the jurisdiction of the Civil Judge Senior Division adjudicating the first suit. Section 16 of the Provincial Small Cause Courts Act, 1887 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 33 of the Maharashtra Rent Control Act 1999 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 jurisdictions,-

(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.

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 (IX of 1887), and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.”

It is thus clear that the jurisdiction of the Court trying Regular Civil Suit no.41 of 2015 is exclusive. The prior suit of the respondent (Special Civil Suit no.1213 of 2014) would be governed under Section 9 of the Code of Civil Procedure. The jurisdiction of the Courts dealing with the suits is thus completely different although the plea of the parties is likely to be similar or overlapping.

6. A similar controversy fell for consideration of a learned Single Judge of the Gujarat High Court in **“Fakruddin Gulamhussein Vora Vs. Manilal Ishwarlal Thakkar”**¹. In this case also, the Court was concerned with a suit filed before Small Causes Court at Ahmedabad and another suit filed before the City Civil Court at Ahmedabad. Mr. Justice M.R. Shah (as His Lordship then was) in similar circumstances observed that the Small Causes Court would have exclusive jurisdiction to grant reliefs as prayed for in the suit which was filed before it and although the subject matter of both the suits were substantially the same, the suit filed before the Small Causes Court at Ahmedabad could not be stayed since the City Civil Court at Ahmedabad before whom earlier suit was pending had no jurisdiction to grant the reliefs which are claimed in the suit under the Presidency of Small Causes Courts Act or the Bombay Rent Act. The Court referring to the decision of this Court in **“Minocher Behramji Damania vs. Hema N. Dadachanji & Ors.”**² made the following observations:-

“8. On the other hand, and as stated above, H.R.PSuit No.1858 of 2002 is filed by the respondents in the Small Causes Court at Ahmedabad for a declaration that the respondents are the tenants of the suit premises. Thus, the reliefs sought in H.R.PSuit No.1858 of 2002 can only be heard and granted by the Small Causes Court at Ahmedabad and the City Civil Court at Ahmedabad has no jurisdiction to hear and grant the reliefs which are prayed for in the H.R.PSuit No.1858 of 2002. Similarly the reliefs which are sought in the aforesaid civil suits being Civil Suit No.2229 of 2001, Civil Suit No.2226 of 2001 and Civil Suit No.2344 of 2001 also cannot be granted by the Small Causes Court at Ahmedabad. Thus, the jurisdiction to grant the reliefs in the aforesaid three civil suits and the jurisdiction to grant the reliefs in H.R.PSuit No.1858 of 2002, both are different; one before the City Civil Court at Ahmedabad and another before the Small Causes Court at Ahmedabad. The Small Causes Court

1 2008(0) AIJEL-HC 220416

2 AIR 1982 Bombay 151

at Ahmedabad has an exclusive jurisdiction to grant relief sought in H.R.PSuit No.1858 of 2002. Therefore, although the subject matter of both the suits can be said to be substantially the same, the subsequent suit being H.R.PSuit No.1858 of 2002 filed before the Small Causes Court at Ahmedabad cannot be stayed since the City Civil Court at Ahmedabad before whom earlier suits are pending has no jurisdiction to grant the reliefs which are claimed in the subsequent suit under the Presidency of Small Cause Courts Act, 1882 or the Bombay Rent Act. Therefore the requisite conditions for stay of the suit under Section 10 of the CPC are not fully satisfied. Therefore the learned Small Causes Court has rightly dismissed the application Exh.100 submitted by the petitioners under Section 10 of the CPC by not staying the subsequent suit. The view which is being taken by this Court is fortified by the decision of the Bombay High Court in the case of Minocher Behramji Damania (supra). In the said decision, in an identical situation, when a suit was filed by "A" in the Small Causes Court for a declaration that he was the tenant of "B" in respect of certain premises and subsequently "B" filed a suit in the City Civil Court for possession on the ground that "A" was a trespasser and for injunction restraining "A" from interfering with his possession and an application was submitted under Section 10 of the CPC to stay the proceedings of suit before the City Civil Court. The Bombay High Court, while considering Section 10 of the CPC read with Section 151 of the CPC has held that, for application under Section 10 of the CPC, mere identity of subject matter of the suit is not enough and the Court in earlier suit should also have jurisdiction to grant reliefs claimed in subsequent suit. The object of Section 10 of the CPC is to prevent Courts of concurrent jurisdiction from adjudicating upon the parallel litigations between the same parties having same subject matter in issue, and for that purpose both the courts should have concurrent jurisdiction. The jurisdiction under the Presidency of Small Cause Courts Act or the Bombay Rent Act and the jurisdiction for granting the declaration by the City Civil Court both are different. The three essential conditions that are necessary for grant of stay of suit under Section 10 of the CPC are:

- (i) that the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit.
- (ii) that the parties in the two suits are the same.
- (iii) that the Court in which the first suit is instituted is the Court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit.

8.1 Therefore what is required to be considered is as to whether the first suit is instituted in the Court of competent jurisdiction to grant

the relief claimed in the subsequently instituted suit; it deals with regard to competency to entertain and grant the relief claimed in the suit.

8.2 Identical question also came to be considered by the Calcutta High Court in the case of Mirta Lina Pr. Ltd. (supra), and dealing with Section 10 of the CPC, the Calcutta High Court in the said decision has held that, while considering the expression "having jurisdiction to grant the relief claimed" contemplates the competency of the first court to grant the reliefs claimed in the second suit.

8.3.”

I am in complete agreement with the above view of the learned Single Judge of the Gujarat High Court. In the present case also the jurisdiction of both the Courts is different as noted above.

7. In my opinion, the learned Trial Judge has overlooked the above crucial position in law and has proceeded to pass the impugned order as if the jurisdiction of both the Courts was at par when in fact the jurisdiction of both these Courts was completely distinct and different. The reliefs prayed for in the suit in question also stands on a different footing and distinct from the respondent's declaratory suit. For the above reasons, the petition needs to succeed. The impugned order is accordingly set aside. Ordered accordingly.

8. At this stage, the learned Counsel for the parties would state that it would be appropriate and in the interest of justice that the suit in question being Regular Civil Suit no.41 of 2015 be directed to be heard alongwith the Special Civil Suit no.1213 of 2014 being heard by the learned Civil Judge Senior Division, Pune. The suggestion is required to be accepted. It is accordingly directed that Regular Civil Suit no.41 of 2015 pending before the

Court of learned Civil Judge Junior Division, Ghodnadi, Shirur, Pune, be transferred to be heard alongwith Special Civil Suit no.1213 of 2014 by the learned Civil Judge, Senior Division, Pune.

9. Petition is accordingly disposed of in the above terms. No costs.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on digitally signed copy of this order.

(G.S.KULKARNI, J.)

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V. Rane
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Prashant
V. Rane
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...Petitioner

vs.

Smt.Karjala Ashalata Naidu.

...Respondent

ORAL JUDGMENT :

Date of Decision: 5th August, 2020

FOR APPROVAL :

THE HON'BLE SHRI.JUSTICE G.S.KULKARNI sd/-

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| 1. | To be referred to the Reporter or not? |) | Yes |
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| 2. | To be shown to the Reporter of the local newspapers or not ? |) | |
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