

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 21 OF 2020

M/s. Dhurvi Properties Pvt. Ltd. and others

vs.

Mrs. Soniya w/o Milind Sable, Proprietor of M/s. Parking Solutions, Nagpur

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. J. M. Gandhi, counsel for applicant.

CORAM : MANISH PITALE J.

DATED : 09/03/2020

This is a revision application challenging order dated 26/02/2020, passed by the Court of Small Causes Court, Nagpur, whereby an application for rejection of plaint filed by the applicant under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) has been rejected.

2. The respondent herein has filed a suit for declaration, perpetual and mandatory injunction, against the revision applicants herein, claiming that it needs to be declared that an agreement executed between the parties dated 18/08/2018 is still in existence and ancillary reliefs pertaining to the same. It is claimed that by virtue of the aforesaid agreement, the respondent has a right to run parking lot in a particular structure and there is also reference made to alleged lawful possession of the respondent in respect of the same.

3. The applicants filed an application under Order VII Rule 11 of the CPC, contending that the suit on the face of it was barred by Section 7(5) of the Maharashtra Rent Control Act, 1999, because the respondent did not answer the definition of licensee as contained in Section 7(5) of the said Act. It was claimed that the use of the words lawful possession and rights claimed under such status by the respondent was wholly misplaced, considering the agreement on which reliance was placed by the respondent. It was further claimed that due to non-payment of dues the said agreement had been cancelled and that therefore, the plaint deserved to be rejected at the threshold. This application was opposed on behalf of the respondent herein.

4. By the impugned order the Small Causes Court rejected the application on the ground that claims made by the applicants herein demonstrated that the matter was required to go to trial and parties need to lead evidence in support of their respective stands. An observation has also been made that it cannot be said that suit is barred by Section 7(5) of the aforesaid Act.

5. The learned counsel appearing for the revision applicants vehemently submitted that the impugned order passed by the Small Causes Court is unsustainable, because the prayers made in the suit filed on behalf of the respondent and the contents of the plaint would demonstrate that even if the agreement in

question was said to be in existence, the reliefs claimed by the respondent were wholly untenable. It was further submitted that a perusal of the definition of the licensee given in Section 7(5) of the aforesaid Act would show that persons like the respondent herein were expressly excluded from the said definition and that therefore, the suit itself was not maintainable before the Small Causes Court.

6. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of **Mrs. M.N.Clubwala and another vs. Fida Hussain Saheb and others, AIR 1965 SC 610**, to support the contentions raised on behalf of the revision applicants.

7. This Court has heard the learned counsel appearing for the revision applicants in detail. A perusal of the plaint and the reliefs sought therein would indicate that the respondent, inter-alia, has claimed that the agreement in question is still in existence and that a declaration is sought to that effect. Other reliefs based on such claim have also been sought from the Court below. It appears that the revision applicants are seriously disputing the fact regarding existence of said agreement as they claim that the said agreement has been cancelled, due to non-payment of dues by the respondent. The Court below is correct in observing that such a dispute would require the parties to lead evidence and therefore, the prayer for rejection of plaint on this basis made by the revision applicants could not be

entertained.

8. As regards the question of the maintainability of the suit and the jurisdiction of the Small Causes Court with reference to Section 7(5) of the aforesaid Act, this Court is of the opinion that the observation made by the Court below in this regard appears to be erroneous only to the extent that it has been stated in an emphatic manner that it cannot be said that suit filed by the respondent was barred under the aforesaid provision. The Court below would have been well advised to say that such a finding either way based on Section 7(5) of the aforesaid Act could not be given at the stage of considering an application under Order VII Rule 11 of the CPC. It is only to this extent that the learned counsel for the revision applicants appears to be correct. But that in itself does not warrant interference in the impugned order, as appropriate clarification can be given by this Court. The over all reasoning and drift of the impugned order appear to be in the right direction and therefore, no case is made out by the revision applicants for invoking limited revisional jurisdiction.

9. As regards reliance placed on the judgment of Hon'ble Supreme Court in the case of **Mrs.M.N.Clubwala and another vs. Fida Hussain Saheb and others** (supra), suffice it to say that the said judgment concerns a situation where the lis between the parties was considered on merits after full dress trial and it did not concern an application for rejection of plaint

under Order VII Rule 11 of the CPC. Therefore, the said judgment cannot be of any assistance to the revision applicants, while seeking rejection of plaint at the threshold.

10. In view of the above, the revision application is dismissed with an observation that the question of maintainability of the suit and as to whether the Small Causes Court will have jurisdiction with reference the Section 7(5) of the aforesaid Act, is an issue that shall be framed by the Small Causes Court along with other issues for determination, in support of which the rival parties shall have a right to lead evidence in support of their respective stands. Considering the urgency of the matter as projected by the revision applicants, the Small Causes Court is directed to finally decide the suit expeditiously and in any case within a period of **six months** from today.

JUDGE