

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.105 OF 2020

Ulhas Harishchandra Dhargalkar .. Petitioner
Versus
Padmakar Vasant Desai & Anr .. Respondents

...

Mr.Sudhir C. Halli for the petitioner.
Ms.Duhita Desai for respondent.

CORAM: BHARATI DANGRE, J.
DATED : 1st DECEMBER 2021

P.C:-

1 By the present application filed by the applicant, the following relief is sought.

(a) *That it be declared by this Hon'ble Court that the defendants are plaintiffs gratuitous licensees in respect of the suit premises and the defendants are in illegal holding possession of the suit premises from 1st of August 2010 and they are illegal occupiers in respect of suit premises i.e. flat no.101 situated at First Floor, Omshanti Building, Plot No.4, Kalanagar CHS Ltd, Bandra (E), Mumbai 400051 adm. 2500 sq.ft.*

(b) *That the defendants be ordered and decreed to vacate the suit premises and hand over peaceful quiet, vacant possession of the suit premises to the plaintiff i.e. Flat No.101, situated at First Floor Omshanti Building, Plot No.4, Kalanagar CHS Ltd, Bandra (E), Mumbai 400051 forthwith adm.2500 sq.ft.*

2 The facts involved reveal, that Suit No.LEC 106/142 of 2010 is instituted by the applicant against the respondent for eviction and payment of arrears; the Suit being instituted in the Small Causes Court No. 38, Bandra Mumbai. The defendant herein also filed a Suit for specific performance in the City Civil Court, Dindoshi, Mumbai on 18/12/2012; being S.C. Suit No.72/2013. The specific performance is sought of an oral agreement for sale dated 26th October 2007 in respect of the same property which is involved in the Suit before the Small Causes Court, being flat admeasuring 2500 sq.ft on the first floor situate at Om Shanti Building, Plot No.4, Kalanagar Co-op Housing Society, Bandra, Mumbai. There is no disagreement among the respective counsel appearing for the applicant and respondent that the suit property is common in both the proceedings.

3 Both the Suits instituted a decade back, are pending and both the parties are pulling all strings to see that the Suit do not proceed. By the present Application, the applicant is seeking transfer of the Suit pending in the Small Causes Court to the City Civil Court, Dindoshi, where the Suit for specific performance filed by the defendant is already pending.

4 On the last date of hearing, I had put to the parties to elaborate the scope of Section 24 which would permit such a transfer. The respective counsel have advanced their arguments.

Tilak

Section 24 of the Code of Civil Procedure is a general power of transfer and withdrawal, which can be exercised by the High Court or the District Court at any stage either on the application of any of the parties or on its own motion. This power permit the two Courts; the High Court and the District Court to transfer any suit, appeal or other proceeding pending before it to any Court subordinate to it for its trial and competent to try or dispose of the same. It also permit withdrawal of any suit, appeal or other proceeding pending in any Court subordinate to it, and try or dispose of the same or transfer the same for trial or disposal. It can also re-transfer the same for trial or disposal to the Court from which it was withdrawn.

The sub-section (1) is qualified by insertion of sub-section (2) which stipulate when such Suit or proceeding is transferred or withdrawn, the Court which is required to try or dispose of such suit or proceeding, will act subject to special directions issued while transferring the suit and it can either retry it or proceed from the point from which it was transferred or withdrawn. Sub-section (3) of Section 24 being explanatory, set out the meaning of the word 'proceeding' to include proceeding for the execution of a decree or order and that the Courts of Addl. and Assistants Judge is declared to be subordinate to the district Court. Sub-section (4) of Section 24 is another clarification which come in aid of the power of transfer contained in sub-section (4) and it reads thus :-

(4) The Court trying any Suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

5 The sub-section squarely covers the case of the applicant and apprehension that on a Suit being transferred to the Civil Court, the relief that was sought and which would be granted only by the Court of Small Causes, being for eviction/rent could not be granted, gets resolved by the aforesaid provision. Since sub-section (4) adumbrate that the Court trying any Suit which is either transferred to it or withdrawn under the Section from a Court of Small Causes shall be deemed to be a Court of Small Causes for the purpose of trying such a Suit. The conundrum raised by the respondent is put to rest by sub-section (4) and resultantly, the City Civil Court which is trying S.C. Suit No.722 of 2013 on transfer of Suit No. LEC No. 106/142 of 2010 from the Court of Small Causes, Bandra, Mumbai shall be deemed to be a Court of Small Causes and will then proceed with the Suit as if it is a suit filed before the Small Causes.

4 Learned counsel for the applicant invite my attention to Section 8 of the Code of Civil Procedure, which gives support to the aforesaid interpretation, since it provide an exception in form of Section 24 along with some other sections and it would be appropriate to refer the said Section.

8 *Presidency Small Cause Courts.*-Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 19[77, 157 and 158], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

5 The interpretation, as above, therefore, stands fortified by Section 8 and if Section 24 is read in its entirety, I am convinced to grant the relief prayed in the Miscellaneous Civil Application by proceeding LEC Suit No.106/142 of 2010 instituted by the applicant to the Court of City Civil Court, Dindoshi, Mumbai, where Suit No.72/2013 is pending.

Application is therefore, made absolute in terms of prayer clause (a).

6 As far as the relief sought by the applicant on the basis that his suit is earlier in point of time, and therefore, the proceeding in the Suit of the defendant shall be stayed by taking recourse to section 10 of the CPC, I do not deem it necessary to grant the prayer at this stage, but reserve the liberty to the applicant to make such a prayer before the learned Judge, upon transfer of the Suit.

SMT. BHARATI DANGRE, J