

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.169/2018

Nirmal Ujwal Credit Co-operative Society Limited, Nagpur (Multi-State), a Society under the Multi State Co-operative Societies Act, 2002, having its registered office at 193, Nandanwan Main Road, Nagpur, through its President/Secretary

... Appellant

-versus-

Narendra Mohanlal Choudhary,
Aged about 53 years, Occupation Business,
R/o.43 Telangkhedi Layout, Ramnagar,
Nagpur and having place of business
at 17, Yashwant Stadium, Dhantoli,
Nagpur.

..Respondent

Shri Bhushan Dafle, Advocate for appellant/plaintiff.
Shri M.R.Johrapurkar, Advocate for respondent/defendant.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.
DATED : 12.01.2021

Judgment : (Per A.S.Chandurkar, J.)

Dismissal of Special Civil Suit No.1155/2011 wherein eviction of the defendant was sought along with prayer for damages/mesne profits from September 2007 on the ground that the Civil Court had no jurisdiction to try the said suit in view of the decision of the full bench of this Court in *Prabhudas Damodar Kotecha & anr. Vs. Manharbala Jeram Damodar & ors. 2007 (5) Mh.L.J. 341* is the subject matter of challenge in this appeal filed under Section 96 of the Code of Civil Procedure, 1908.

2. As per the plaint averments it has been pleaded by the plaintiff which is a co-operative society through its President that the premises admeasuring 5329.68 square feet was permitted to be occupied by the defendant in view of his communication dated 08.08.2007 seeking permission to do so for a period of one month. The plaintiff permitted the defendant to occupy the said premises for a period of one month from 16.08.2007 to 15.09.2007 on honourarium of Rs.15,000/- apart from electricity charges. It is the case of the plaintiff that there was no intention to create any relationship of landlord and tenant between the parties and the phraseology used in various communications issued to the defendant do not indicate such intention. The defendant was treated as a permissive occupier of the premises in question and if the rent was to be charged the same would have been much higher than the amount of honourarium prescribed. The defendant did not vacate the suit premises on expiry of one month and thereafter was paying sum of Rs. 7,000/- per month which according to the plaintiff was towards reimbursement of the expenses for maintenance of the premises. Despite various requests made to the defendant, he failed to vacate the premises. In view thereof and in that backdrop, an application filed by the defendant under Section 29 of the Maharashtra Rent Control Act, 1999 (for short, 'the Act of 1999') seeking restoration of essential services withheld by the plaintiff, the

present suit came to be filed on 03.09.2011. It was prayed that a decree for eviction be passed against the defendant and vacant and peaceful possession be handed over to the plaintiff. Monetary decree for Rs.2,29,17,624/- was also prayed for.

3. In the written statement at Exhibit 20 the claim as made by the plaintiff was denied. It was pleaded that merely because the defendant had initiated proceedings against the plaintiff before the Court of Small Causes the suit for eviction was filed by way of counter blast. It was further pleaded that the Civil Court had no jurisdiction to try the suit especially when the occupation of the defendant was as a tenant.

4. The parties have led evidence before the trial Court. Amongst other issues, an issue as to jurisdiction of the Civil Court to try the suit was framed and the trial Court held that it had no jurisdiction to try the same. On that premise, the suit came to be dismissed. Being aggrieved the plaintiff has come up in appeal.

5. Shri Bhushan Dafle, learned counsel for the appellant/plaintiff submitted that the trial Court had committed an error in holding that the defendant had the status of a tenant due to which the Civil Court had no jurisdiction. He submitted that there was no intention between the parties to create any tenancy and there was no relationship of landlord and

tenant between them. Merely because the word “honourarium” was mentioned in Exhibit 37 the same would not result in ouster of the jurisdiction of the Civil Court. The occupation of the defendant was illegal after expiry of the period of one month as stated in Exhibit 37. Though the defendant remitted certain amounts to the plaintiff and the same were accepted, it would not mean that the same resulted in creation of such relationship. The suit for eviction before the Civil Court was rightly filed and the trial Court ought to have decreed the same especially when ownership of the plaintiff was not disputed and the defendant had been permitted to occupy the premises only for a period of one month. He therefore submitted that after holding that the Civil Court had jurisdiction to decide the suit, the same be remitted to the trial Court for proper adjudication. In support of his submissions the learned counsel placed reliance on the decision in *M/s. Technicians Studio Pvt. Ltd. Vs. Smt. Lila Ghosh and anr. AIR 1977 SC 2425*.

6. Per contra Shri M.R.Joharapurkar, learned counsel for the respondent/defendant supported the impugned judgment. He submitted that there was sufficient evidence on record to indicate that there was a relationship of licensor and licensee between the parties. Referring to the averments in paragraph 5 of the plaint, he submitted that the defendant was described as a permissive occupier in the plaint itself and therefore

the law as laid down by the full bench in *Prabhudas Damodar Kotecha* (supra) was rightly applied by the trial Court. He further referred to the other proceedings initiated by the defendant under Section 29 of the Act of 1999 which were pending adjudication. Though the initial order passed by the Court of Small Causes had not attained finality, it was clear that the reliefs sought in the suit were beyond the jurisdiction of the Civil Court. He also sought to rely upon the decisions in *Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale AIR 1995 SC 1102*, *Natraj Studios Private Limited Vs. Navrang Studios, AIR 1981 SC 537*, *Raghunath P.Singhania Vs. Yasin T. Mavany 1998 (3) Mh. L. J. 354*, *Carona Limited Vs. Sumangal Holding 2007 (4) Mh. L.J. 551* and *Prabhudas Damodar Kotecha* (supra). It was thus submitted that no interference was called for with the judgment of the trial Court.

7. On hearing the learned counsel for the parties, the following points arise for determination :

- (i) Whether the finding recorded by the trial Court that the Civil Court had no jurisdiction to try the suit is legal and proper ?
- (ii) If answer to point no.(i) is in negative what order ?

8. We have referred to the pleadings in the plaint and in the written statement. It is undisputed that the suit premises is owned by the plaintiff and on 08.08.2007 the defendant requested the plaintiff to permit

him to use the said premises for a period of one month on suitable consideration (Exhibit 36). The plaintiff on 14.08.2007 (Exhibit 37) replied to the said application and stated as under :

“With reference to above, we are pleased to inform you that Hon’ble Board decided to let out our Societies premises situated at Shree Ganesh Chambers, Mehadia Square, Dhantoli, Nagpur-12 for one (1) month and that period commencing from 16th August 2007 to 15th September 2007. Honourarium for the period has been decided Rs.15,000/- for a month apart from Electricity Charges.”

It is also not in dispute that after 15.09.2007 the defendant did not vacate the suit premises and there was some litigation between the parties at the behest of the defendant before the Small Causes Court (Exhibit 55). The record further indicates that from time to time the defendant was remitting the amount of Rs.7,000/- per month to the plaintiff-society as consideration for occupying the suit premises which was accepted by the society without demur. This has been averred in paragraph 6 of the plaint and admitted by PW 1 to be correct. Though said witness sought to justify this payment as being reimbursement of maintenance charges he also admitted that there was no evidence of such maintenance being carried out. There are further documents on record indicating payment of electricity bills and property tax by the defendant in lieu of such demand being made from the plaintiff.

From this material on record it is clear that the premises were

initially “let out” as stated in Exhibit 37 by the society to the defendant. After the period of one month, the occupation of the defendant continued and in paragraph 5 of the plaint the defendant has been described as a “permissive occupier”. It is in this backdrop the question of jurisdiction would have to be considered and decided.

9. The provisions of Section 7(5) of the Act of 1999, Section 26 of the Provincial Small Cause Courts Act, 1887 and Section 52 of the Easements Act, 1882 are material. The question as to whether a suit by a licensor against a gratuitous licensee is maintainable before the Small Causes Court or whether it could be filed before the Civil Court has been considered by the full bench in *Prabhudas Damodar Kotecha* (supra). While answering that question it was held by the full bench that the expression “licensee” used in Section 41 (1) of the Presidency Small Causes Courts Act 1882 (for short, ‘the Act of 1882’) does not derive its meaning from the expression “licensee” as used in Section 5(4-A) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, ‘the Act of 1947’) as was then operating. It was held thereafter that a suit by a licensor even against a gratuitous licensee would lie before Presidency Small Causes Court under Section 41 of the Act of 1882.

In *Mansukhlal Dhanraj Jain* (supra) the Hon’ble Supreme Court considered the provisions of Section 28(1) of the Act of 1947 and

held that on the pleading that the plaintiffs therein who claimed to be licensees on monetary consideration and who apprehended dispossession would be able to move the Small Causes Court for necessary reliefs.

10. We find that aforesaid law which binds this Court clearly answers the question of jurisdiction against the plaintiff. As stated above, the occupation of the defendant has been described by the plaintiff itself as a “permissive occupier” in paragraph 5 of the plaint. Admittedly consideration was exchanged between the parties in lieu of the defendant’s occupation which fact is also averred in paragraph 6 of the plaint. The payment of electricity bills and property taxes has also been made by the defendant. Notice to vacate the premises was given for the first time on 02.05.2011 (Exhibit 38). In the light of this material on record, it is found that the trial Court rightly answered issue no.3 in the negative to hold that the jurisdiction of the Civil Court stood ousted. The decision relied upon by the learned counsel for the appellant/plaintiff in *M/s. Technicians Studio Pvt. Ltd.* (supra) does not assist the case of the plaintiff and as held therein the aspect of relationship between the parties has to be determined on the basis of facts of each case. In view thereof the conclusion recorded by the trial Court is upheld. Point no.(i) as framed is answered accordingly. It is therefore not necessary to answer Point No.(ii).

11. As a result of this discussion, the judgment of the trial Court in Special Civil Suit No. 1155/2011 is maintained. The First Appeal stands dismissed leaving the parties to bear their own costs.

It is clarified that we have not examined the respective contentions of the parties on the substantive reliefs sought in the suit and the finding recorded by the trial Court against issue no.3 stands upheld. Observations in this judgment are made only to determine the question of jurisdiction. The plaintiff is free to take such steps as are permissible in law for pursuing the prayers made in the suit.

JUDGE

JUDGE

Andurkar..