

11.03.2022
Ct. 21
D/L 5

C.O. 1781 of 2021
(Via Video Conference)

Md. Ezaz
-Vs-
M/s. Popat & Kotecha Property & Anr.

Mr. Abhijit Ray,
Mr. M.M. Haque,
Mr. Shubham Gupta,

... for the petitioner.

Mr. Noelee Banerjee,
Mr. Dipak Dey,

...for the respondent.

The present application under Article 227 of the Constitution of India is at the instance of the defendant /JDR tenant being aggrieved by order of rejection of his application under Section 47 CPC in Ejectment Execution Case No. 89 of 2013 arising out of Ejectment Suit No. 239 of 2011 by learned Chief Judge, Presidency Small Causes Court dated 13.02.2020.

The facts necessary for determination of the present application in gist is that opposite parties filed an eviction suit against the petitioner and who decided not to contest after putting appearance and after filling application under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 and as such the case was decreed ex-parte against him.

That petitioner has also filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree and which was also dismissed by the learned Court below. That being aggrieved by the dismissal of the Misc. No. 24 of 2014 under Order 9 Rule 13 CPC the petitioner has preferred a Misc. Appeal No. 36 of 2019 before the Chief Judge, City Civil Court Calcutta and which was also dismissed on the ground that Chief Judge, City Civil Court and Chief Judge, Presidency Small Causes Court being members of the same cadre of the service no appeal lies against the order of the latter before the former Court on 17.08.2019.

It also appears in the meantime the land lord/DHR has put the ex-parte decree into execution by filling Execution Case No. 89 of 2013 and where the present petitioner has filed an application under Section 47 CPC read with Section 151 CPC alleging that the decree being nullity passed by Chief Judge, Small Causes Court having no jurisdiction or power to try or hear case under West Bengal Premises Tenancy Act, 1997 and in view of the judgement of this High Court in Shri Rajkumar Modi Vs. Sri Prabash Dutta reported in (2010) 4 CAL LT 417 SC the Execution Case cannot proceed against him and decree passed without jurisdiction is not binding upon the petitioner.

The learned Chief Judge, Presidency Small Causes Court by passing the impugned order held that

the petitioner cannot be allowed to take plea on the ground of jurisdiction at belated stage and which the petitioner has failed to alleged either in the application under Order 9 Rule 13 CPC or when he filed the applications under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 and thereby rejected the application under 47 of the CPC.

That by virtue of amendment in Section 6 of the West Bengal Premises Tenancy Act, 1997 in the year 2005 and which has been given retrospective effect a suit filed by landlord for recovery of possession of any premises shall lie before a Civil Judge having jurisdiction.

Section 12 A of the Act of 1997 further provides;-

(1) Notwithstanding anything contain in any other law, a suit or proceeding by a landlord against a tenant in which recovery of possession of any premises to which this Act applies is claimed shall lie to the Courts, as set out in the Schedule IV and no other Court shall be competent to entertain or try such suit or proceeding.

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis, apply to all suits and proceedings referred to in sub-section (1) except suit or proceeding which lie to the High Court at Calcutta.

SCHEDULE IV of the Act of 1997 provides: Where the premises are situated on land wholly within the

ordinary original civil jurisdiction of the High Court at Calcutta-

- (a) in case the value of the suit exceeds ten lakh rupees, to the High Court at Calcutta ;
- (b) in case the value of the suit does not exceed ten lakh rupees but exceeds sixty thousand rupees, the City Civil Court establish under Section 3 of the City Civil Courts Act, 1953 (West Bengal Act XXI of 1953);
- (c) in any other suit, to the Chief Judge of the Court of Small Causes constituted under the Presidency Causes Courts Act, 1882 (15 of 1882), in the town of Kolkata, who may try the suit himself or may transfer the suit for trial to any other judge of the said Court who shall try the suit as a court of first instance.

West Bengal Act XIII of 1999 which relates to The Presidency Small Causes Court (West Bengal Amendment) Act, 1999 and which has amended Section 18 of the Act 15 of 1882 provides that “ (2) Notwithstanding anything contained in section 19 or sub-section (1) of the section, but subject to the provisions of sub-clause (iii) of clause (1) of the First Schedule to the West Bengal Premises Tenancy Act, 1956, the Small Cause Court shall have jurisdiction to try all suits and proceedings for eviction of the tenant

under Chapter III of the said Act as a civil court of ordinary original jurisdiction.

West Bengal XII of 1999 which relates to amendment in the City Civil Court (Amendment Act) 1999 and which effected amendment of Section 8 and inserted sub-clause 3 and which reads “Save as otherwise provided the foregoing provisions of this section, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction in respect of an appeal arising out of a suit or proceeding for the recovery of possession of any premises under the West Bengal Premises Tenancy Act, 1956”.

It further inserted new section 8A in respect of Revision and provides “ A Revision arising out of a suit of proceeding for the recovery of possession of any premises under West Bengal Premises Tenancy Act, 1956, shall lie to the City Civil Court and which shall be deemed to be a District Court within the meaning of section 115A of the Code of Civil Procedure, 1908.

It has also caused amendment in section 6 and which provides :- (1) Nothing in this Act shall affect any appeal or proceeding relating to the recovery of possession of any premises under the West Bengal Premises Tenancy Act, 1956, pending in the High Court every such appeal or proceeding shall be continued as if this Act had not been passed.

(2) All suits and proceedings of the value not exceeding thirty thousand rupees in each individual case relating to the recovery of the possession of any premises under the West Bengal Premises Tenancy Act, 1956, pending in the City Civil Court on the date immediately before the date of coming in to force of this Act, shall stand transferred to the Small Cause Court on the date on which this Act comes into force.

Reading section 6 and 12A of the West Bengal Premises Tenancy Act, 1997 and Schedule IV of the Act and the amendments in both The Presidency Small Cause Courts Act 1882 and The City Civil Court Act, 1953 in the year 1999, it is clear that an Eviction Suit in respect of premises situated within the ordinary civil jurisdiction of the High Court at Calcutta having value less than sixty thousand rupees shall lie before the Chief Judge Presidency Small Causes Court and who may try the suit by himself or may transfer the suit for trial to any other judges of the said Court.

Therefore, neither the West Bengal Premises Tenancy Act, 1956 nor The West Bengal Premises Act, 1997 or the Presidency Small Causes Courts Act, 1982 and subsequent amendment thereto nowhere provide that Chief Judge Presidency Small Causes Court is debarred from hearing Eviction Suit having value less than sixty thousand rupees.

It is true in Shri Raj Kumar Modi (supra) the Hon'ble Co-ordinate Bench of this Hon'ble High Court has taken of view that Chief Judge Presidency Small Causes Court and its immediate appellate court of Chief Judge, City Civil Court are members of same service cadre, but the law nowhere provides that Chief Judge, Presidency Small Causes Court cannot try or dispose of Eviction Suit.

Therefore, this Court is of view though Chief Judge, Presidency Small Causes Court belongs to the same service cadre to which the Chief Judge City Civil Court belongs, there is no statutory bar upon the Chief Judge, Presidency Small Causes Court from hearing and disposing Eviction Suit having value less than sixty thousand rupees.

The JDR/petitioner in his application under Section 47 of the CPC has alleged that decree passed by the Chief Judge, Presidency Small Causes Court suffers from inherent lack of jurisdiction and as such the decree is null and void and not executable but in view of the above findings of this court, the Chief Judge, Presidency Small Causes Court has statutory jurisdiction to try and hear Eviction Suits filed in his Court.

Similar question regarding territorial jurisdiction of the Executing Court was raised by JDR by filling an application under Section 47 of CPC before the

Executing Court and while dealing with such issue the Hon'ble Supreme Court in *Sneh Lata Goel Vs. Pushplata & Ors.* reported in (2019) 3 SCC 594 their lordships have been pleased to hold that executing court has no jurisdiction to entertain such objection. Objection regarding want of territorial jurisdiction of Civil Court does not relate to subject matter of suit and Court's inherent jurisdiction. It must, therefore, be raised before Court which passed decree at earliest possible opportunity and if rejected must be raised before competent court in appeal or can be entertained by such court only where there is consequent failure of justice. Further, it has been held section 21 CPC makes it clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a Civil Court to entertain the suit. Objection for want of territorial jurisdiction has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled on or before such settlement. It is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained.

From the record it appears the petitioner/JDR never questioned the jurisdiction of the Chief Judge, Presidency Small Causes Court to try Ejectment Suits filed in his Court when he filed the applications before the said Court under Section 7(1) and 7(2) of the West

Bengal Premises Tenancy Act, 1997 nor in his application under Order 9 Rule 13 CPC. In fact, he appears to have raised such issue after dismissal of his application under Order 9 Rule 13 CPC and his Misc. Appeal No. 36 of 2019 by the Chief Judge, City Civil Court at Calcutta, where learned Judge had observed that no appeal lies before his Court against the decree passed by Chief Judge, Presidency Small Causes Court as both of them belongs to same service cadre. It appears the petitioner has filed petition under Section 47 of the CPC before the Executing Court in view of such observation made by the Chief Judge, City Civil Court while dismissing his appeal. Therefore, the petitioner cannot challenge the territorial jurisdiction of the Chief Judge, Presidency Small Causes Court to try the Eviction Suit filed against him by filling an application under Section 47 of CPC.

In view of the discussions made above this Court does not find any reason to interfere with the impugned order passed by the Chief Judge, Presidency Small Causes Court.

However, it has come on record that during the pendency of Execution Case the land lord has accepted the rent along with other charges tendered through cheque from the present petitioner/JDR on 1st January, 2022. Let the copy of rent bill be retained in the record.

Accordingly, **C.O. 1781 of 2021 is dismissed.**

Connected application, in any, is disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)