

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5503 OF 2021

ARJUN
VITTHAL
KUDHEKAR

Digitally signed by
ARJUN VITTHAL
KUDHEKAR
Date: 2022.12.05
18:00:33 +0530

The Rajlaxmi Urban Co-op. Bank Ltd. ...Petitioner

V/s.

Jayashree Ravindra Shinde & Anr. ...Respondents

Mr. Milind M. Sathaye, for the Petitioner.

Mr. Nitin Mulye, for Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 24th NOVEMBER, 2022**

P.C.:

1. The Petitioner who is original Defendant/Tenant has challenged order dated 19th January, 2021 passed by learned 4th Jt. Civil Judge, Senior Division, Nashik below Exh. 31 in R.C.S. No.283 of 2010 by which the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 filed by the Plaintiffs i.e. Respondents has been allowed.

2. The Respondents filed R.C.S.No.283 of 2010 in the Court of learned Civil Judge, Senior Division, Nashik. In the said suit the Plaintiffs have raised specific contention that the said suit has been filed under the provisions of the

Transfer of Property Act, as paid up share capital of the Petitioner-Bank is more than Rs. 1,00,00,000/- and, therefore, protection granted by Maharashtra Rent Control Act, 1999 is not available to the Petitioner.

3. The Petitioner filed written statement *inter alia* contending that the co-operative bank is not contemplated under Section 3 (1)(b) of the Maharashtra Rent Control Act, 1999 regarding exemption. It is therefore contended that the Civil Court has no jurisdiction as the suit has been filed under the Transfer of Property Act.

4. In the meanwhile, the Respondents filed Application bearing Exh. 22 seeking prayer to frame preliminary issue of jurisdiction and, accordingly, by order dated 22nd October, 2012 such issue has been framed.

5. In view of the contentions raised in the written statement, the Respondents have filed Application bearing Exh. 31 seeking amendment. By the amendment the Respondents are seeking to delete few lines mentioned in paragraph no. 9 contending that protection granted by the Maharashtra Rent Control Act, 1999 is not available to the Petitioner, and also corresponding necessary amendment is

proposed in paragraph 13 stating that as the dispute is between the landlord and tenant, the rent Court has no jurisdiction to deal with the said suit.

6. Mr. Sathaye, learned counsel appearing for the Petitioner submitted that already preliminary issue regarding jurisdiction has been framed. The Respondents have filed the Exh. 31 Application to get over the contention of the Respondents that regular Civil Court has no jurisdiction. As the Civil Court has no jurisdiction, the said suit is not maintainable.

7. On the other hand, Mr. Mulaye, learned counsel appearing for the Respondent relied on the judgment of this Court reported in (1987) 1 Bom.C.R. 458 in the matter between *Ratanlal Gulabji Bhati Vs. Himmatlal Hukumaji Parihar*. He submitted that in District Nashik, there is no separate Small Cause Court established. He submitted that, even after the amendment, the suit will lie in the Court of Civil Judge, Senior Division, Nashik and, therefore, supported the impugned Order. He submitted that the learned Trial Court relied on the said judgment of *Ratanlal Gulabji Bhati* (supra) and allowed the Application.

8. It is admitted position that, as far as District Nashik is concerned, the suit between landlord and tenant under the provisions of Transfer of Property Act as well as under the Maharashtra Rent Control Act lies before Civil Judge, Senior Division, Nashik.

9. The contentions regarding jurisdiction raised by Mr. Sathaye, if accepted, then after the issue regarding jurisdiction is decided, the plaint will be returned by Civil Judge, Senior Division, Nashik to the Petitioner-Plaintiff for presenting it before the Proper Court i.e. from the Court of Civil Judge, Senior Division, Nashik to the same court i.e. Civil Judge, Senior Division, Nashik. Thus, as far as the present case is concerned, no useful purpose will be served by setting aside the impugned order.

10. The observations in paragraph 8 in *Ratanlal Gulabji Bhati* (supra) case are applicable to the present case. The said paragraph 8 reads as under:

"8. That apart, there is yet another answer to Mr. Manudhanes plea. In the instant case, the Court which tried the suit under section 28 is the self-same Court which tried the suit on title. Mr. Manudhane contended that the suit filed by a landlord against a tenant, which is governed

by section 28 of the rent Act, is no doubt tried by the Civil Judge (J.D.), at Vasai who himself tries a suit by a owner of the property against the trespasser on title. But he contends that capacities of these two court are different. In the first case, the Court is constituted under the Rent Act; in the other case the Court is one contemplated by the Civil Procedure Code. In the first case, the suit is provided by section 28 of the Rent Act; in the other case, the suit is one contemplated under section 9 of the C.P.C. According to Mr. Manudhane, the plaintiff should have filed the suit as a rent suit and not as a general suit governed by section 9 of the C.P.C.

The distinction sought to be made by Mr. Manudhane is no doubt ingenious. But a little analysis of the question would give an answer to the same. **Supposing the suit was to be dismissed because it is in the Court having no jurisdiction. Then, either the plaint would be returned for presentation in the proper Court, or the suit would be dismissed and the plaintiff would have to file another suit. In which Court, he would file it? In the self-same Court before the self-same Judge and for the self-same relief.** The position would have been different if the suit was to be filed in the city of proper Bombay or, say, in the city such as Poona where there are

Small Causes Court established. A suit which can be entertained only by Small Causes Court under section 28 of the Rent Act cannot be filed in a Civil Court and vice-versa. **But when the same Court is entertaining both the suits, the contention that the Court has no jurisdiction to entertain the suit, because it should have been filed under the Rent Act is, to my mind, nothing but a distinction amounting to hair-splitting."**

(Emphasis added)

11. The learned Trial Court while allowing Application at Exh.31 has given very valid reasons in paragraph 8, which reads as under:

"8. However, in the present suit the relationship between the parties is undisputed. The nomenclature of the suit won't govern the suit. Court has to look into the averments in the plaint. The amendment sought would bring more clarity by removing the ambiguity and thus, describing the suit under Rent Control Act instead of Regular suit won't make any change in the substantial pleading in the plaint. Since decade the suit is pending before Court. Harping on technicalities and rejecting amendment on that count forcing parties to file fresh suit won't meet the ends of justice. Moreover, when the

plaintiff in case on rejection needs to file the suit in the civil court as small cause court do not exist at Nashik. The ratio laid down in the ruling cited by the plaintiff Ratanlal Gulabji Bhati Vs. Himmatlal Hukumji Parihar, 24 bom. R.C. 1987 is applicable to the facts in hand. Whereas, ruling relied by defendant is of hardly any help. Thus, amendment sought being necessary needs to be allowed.”

12. Both the parties are in agreement that as far as District Nashik is concerned, as there is no Small Causes Court, the suit even after amendment will lie before the same Court i.e. Court of Civil Judge, Senior Division, Nashik. Assuming that the suit lies before Civil Judge, Junior Division, Nashik in view of Section 33 of the Maharashtra Rent Control Act, 1999 then also after carrying out the amendment appropriate further steps can be taken. However, that can not be the reason to reject the amendment application.

13. For the above reasons the Writ Petition is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)