

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

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CIVIL REVISION APPLICATION 235 OF 2022

Eon Hadapsar Infrastructure Pvt. Ltd.,
Pune-411016, through Ms. Sandhya
Godiawala.

... Applicant /
Petitioner.
(Org. Defendant)

Versus

F2 Fun & Fitness (I) Pvt. Ltd.,
Pune-28, through Mr. Justin Joseph.

... Respondent.
(Org. Plaintiff).

Mr. S. S. Patwardhan, Advocate for the Applicant/Petitioner.
Mr. Surel S. Shah, Advocate a/w. Durgaprasad Subnis &
Durgesh Rege i/by Lex Firmus for Respondent.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 10, 2022

P.C. :-

1. Heard learned counsel Mr. S. S. Patwardhan for the Applicant and learned counsel Mr. Surel S. Shah for the Non-Applicant. With their consent, the Civil Revision Application is finally heard at the stage of admission.

2. Applicant is the Defendant in Regular Civil Suit-754 of 2020 which is brought by Non-Applicant/Plaintiff, seeking declaration that the lease deed dated 16.05.2012 is valid and subsisting and that the Plaintiff is entitled to continue with exclusive use and occupation of the possession of the suit premises which is an open plot, admeasuring 27,542

sq.ft., with structure and swimming pool area located in project "One North", situated at village Hadapsar, Pune. Other declaration sought by the Plaintiff is that the notice of termination of lease dated 03.06.2020 is invalid. The Plaintiff sought consequential permanent injunction, restraining the Defendant from entering into the suit premises and from disturbing the occupation/ possession of the Plaintiff.

3. The Defendant preferred an Application under Order 7, Rule 11 of the Code of the Civil Procedure, 1908 ("Code") for rejection of the plaint on the premise that in view of the provisions of section 26 (1) of the Provincial Small Causes Courts Act, 1887 (Act) and on the face of the averments in the plaint, the Civil Court is not competent to entertain and try the suit and the bar engrafted under section 16 of the Act ousts the jurisdiction of the Civil Court. The Plaintiff asserted that the suit is barred by law and the plaint is liable to be dismissed or in the alternate, to be returned to the Plaintiff for presentation in the appropriate Court.

4. The learned 11th Joint Civil Judge, Senior Division, Pune, rejected the Application preferred by the Defendant under Order 7, Rule 11 of the Code vide order dated 06.10.2020 which is impugned herein.

5. While it would not be necessary to make an elaborate reference to the process of reasoning adopted by the

learned trial Judge, the conclusion arrived at may be noted. In paragraph 21 of the order impugned, the learned trial Judge observed thus :

“21] The plaintiff has filed main suit for challenging the authority of defendant in issuance of termination notice. The relationship in between plaintiff and defendant as a lessee and lessor is a disputed question. In such situation the cases relied by defendant may not appear helpful to accept its plea that this Court has no jurisdiction to try, decide and entertain the suit. The defendant has failed to satisfy that the cognizance of present suit is barred under Sec. 26 of the Provincial Small Causes Courts Act, 1887. Hence, I gave my negative finding to point No. 1.”

6. Mr. Patwardhan would submit that the learned trial Judge seriously erred in observing that the relationship of the landlord and tenant is disputed. Inviting my attention to the provisions of the Act, Mr. Patwardhan would submit that section 26 provides that the suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property of licensor or licensee except those to which other Acts apply, lie within the exclusive jurisdiction of the Court of Small Causes. Mr. Parwardhan would submit that the exclusive jurisdiction of the Court of Small Causes to entertain and try all suits and proceedings between a licensor and licensee or a landlord and tenant is expansive as is indicated by the use of the expression “*relating to*” in sub-

section (1) of section 26 of the Act. Mr. Patwardhan would submit that in view of the provisions of section 16 of the Act, the jurisdiction of the Civil Court to entertain and try the suits, which are to be entertained and tried by the Court of Small Causes, is expressly barred.

7. Mr. Surel Shah would support the order impugned on the premise that the learned trial Judge committed no error in holding that since the relationship of landlord and tenant is disputed, the plaint cannot be rejected.

8. Sections 26 and 16 of the Act read thus :

“26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.—

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging

House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply.”

“16. Exclusive jurisdiction of Courts of Small Causes. —Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.”

9. It is well settled that while considering an Application under Order 7 Rule 11 of the Code, the only material which can be scrutinized is the plaint and the documents which can be considered as part of the plaint. In view of the submission of Mr. Patwardhan that the suit is barred on the face of the averments in the plaint, it would be apposite to scrutinize the plaint's averments.

10. Perusal of the averments in paragraphs 1 to 29 reveals that the entire cause of action which is pleaded, is founded on the purported rights of the Plaintiff on the basis of the lease agreement. In paragraph 26, the Plaintiff asserts that the Defendant is refusing to recognize the rights of the Plaintiff as a tenant in respect of the suit premises under the lease deed and further that the alleged termination of the lease deed by notice dated 03.06.2020 is bad in law. In paragraph 27, the averment is that the

plaintiff is entitled to a declaration of tenancy and finally in paragraph 31 the Plaintiff avers thus :

“31] The Plaintiff submits that the suit is for a declaration of tenancy rights in respect of the Suit Premises under the provisions of Section 105 of the Transfer of Property Act, 1982 and the suit being between landlord and tenant, this Hon’ble Court has jurisdiction to entertain and try the suit.”

11. Considering the case of the Plaintiff, it is irrefutable that the suit can be entertained and tried only by the Court of Small Causes and that the jurisdiction of the Civil Court is expressly barred in view of the provisions of Section 16 of the Act.

12. The order impugned is clearly unsustainable and warrants interference in supervisory jurisdiction.

13. However, instead of rejecting the plaint, the plaint is liable to be returned to the Plaintiff for its presentation in the appropriate Court.

14. In this view of the matter while setting aside the order impugned and holding that the Civil Court has no jurisdiction to try and entertain the Suit, I direct that the learned trial Judge shall pass consequential order in exercise of powers under Order 7 Rule 10 of the Act and return the plaint to the Plaintiff for its presentation in the appropriate Court.

15. Learned Trial Judge shall do the needful within the next two weeks.

16. The Civil Revision Application is allowed in the aforesaid terms.

17. The interim relief which is operating in the Civil Suit shall continue to operate for further period of four weeks.

(ROHIT B. DEO, J.)

(Note : Above Para 17 is added, as per the order dated 20.06.2022)

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