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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8369 OF 2021**

Ashok Kumar Shrivastav

.... Petitioner.

V/s

Shambulal Ayodhyaprasad

Shrivastava and others

.... Respondents.

Mr. B.S. Nayak for the Petitioner.

Ms. Minal J. Chandnani for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 19, 2022

P.C.:-

1] The present Writ Petition is by Defendant No.2 to the RAD Suit No.1045 of 2005. In the said suit, prayers against the present Petitioner were as under:-

“(a) That it be declared that :

(i) Plaintiff is tenant of the defendant Nos. 1 and 3 in respect of the suit premises viz. Shop No.2 Vithaldas Pranjivandas Chawl, Dr. D’silva Road, Dadar, Mumbai 400028.

(ii) The transfer of rent bill of the above Shop by the Defendant Nos. 1 and 3 in favour of Defendant

No.2 is illegal, null, void and bad in law and the same be quashed and set aside.

(b) That the defendants by themselves and through their agents, servants and representatives be permanently restrained by an order and injunction of this Hon'ble Court from creating third party interest in respect of the suit premises viz. Shop No.2 Vithaldas Prajivandas Chawl, Dr. D'silva Road, Dadar, Mumbai 400028 and/or from inducting into the suit premises any third party in any manner whatsoever and/or from further transferring of rent bill without permission of Plaintiff.

(c) Interim and ad-interim reliefs in terms of prayer clause (b) above.

(d) Cost and professional cost of the suit.

(e) Such further and other reliefs as this Hon'ble Court may deem fit and proper."

2] Suit came to be decreed vide judgment and order dated 04/12/2017 wherein issue in relation to tenancy of Respondents/Plaintiff and that of Defendant Nos. 1 and 3 was looked into and appreciated. Another issue which was looked into and appreciated was, whether rent receipts were transferred by Defendant Nos. 1 and 3 in favour of Defendant No.2, the present Petitioner. Both these issues were answered against the Petitioner.

3] As a sequel of aforesaid, suit came to be decreed with following directions:-

“ORDER

A. The suit is decreed with costs as follows:

1. The plaintiff is declared as tenant of Shop No.2, Vithaldas, Prajivandas Chawl, Dr. D'silva Road, Dadar, Mumbai – 400028 i.e. the suit premises.

2. The defendants do transfer tenancy in respect of suit premises in the name of the plaintiff.

3. Prayer of the plaintiff for injunction in respect of the suit premises is rejected.

4. The defendants do pay costs of the suit to the plaintiff and bear their own costs.

5. Decree be drawn up accordingly.”

4] The present Petitioner feeling aggrieved, preferred an appeal being R. Appeal No.49 of 2019 which was also dismissed vide impugned judgment dated 21/10/2021.

5] Mr. Nayak, Counsel for the Petitioner invited my attention to the provisions of Section 41 of the Maharashtra Rent Control Act

(Hereinafter referred to for the sake of brevity as “the said Act”) so as to urge that, considering the nature of relief claimed, suit was not maintainable before the Small Causes Court, as it lacks jurisdiction to entertain the suit. According to him, relief claimed is outside the purview of the provisions of Section 41 of the said Act.

6] While countering the aforesaid submissions, Ms. Chandnani, Counsel for the Respondents would support the claim by inviting my attention to the provisions of Section 41 of the said Act and also judgment of this Court in the matter of *Moosabhai Gagji Khetani vs. Rahim Manji Kaba* dated 13/7/2022 delivered in Interim Application (L) No.29900 of 2021 in Execution Application No.356 of 2021, so also judgment of the Apex Court in the matter of *Mahadev P Kambekar (D) TR. LRS vs. Shree Krishna Woolen Mills Pvt. Ltd* in Civil Appeal No.5753-5754 of 2011 decided on 31/1/2019. She has also relied upon the judgment of Division Bench of this Court in the matter of *Mina Srinivasan Krsihnan and Anr. vs. Arun Bhaskar Adarkar* reported in **2014 SCC OnLine Bom 1231**.

7] With the assistance of respective learned Counsel, I have appreciated the aforesaid judgments in the backdrop of the relief claimed in the Plaint. Primarily, it appears that dispute in the matter is in relation to grant of declaration *inter se* between tenants. Dispute *inter se* is between tenant to tenant and not landlord-tenant. Pursuant to the order dated 4th August, 2022 passed by this Court, Counsel for Respondents/Plaintiffs would invite attentions of the this Court to the

following judgments in the matters of *Moosabhai Gagji Khetani*, *Mahadev P. Kambekar (D) TR. LRS* and *Mina Srinivasan Krsihnan*, cited supra. According to her, scope of Section 41 of the said Act is required to be appreciated, particularly having regard to the definition of the 'tenant' and 'landlord'. According to her, Defendant No.2 and Plaintiff are father and son respectively. She would urge that it is out of differences between Defendant No.2 and Plaintiff, suit came to be initiated. As far as landlord i.e. Defendant Nos. 1 and 3 are concerned, for them it is an *inter se* dispute between father and son who are, in the capacity of tenant are litigating on the issue of their right to tenancy. As a sequel, both the parties i.e. Plaintiff and Defendant No.2 are willing to offer rent and in fact offered rent to Defendant Nos. 1 and 3 i.e. landlord. In such eventuality, relief claimed is squarely covered by the provisions of Section 41 of the said Act and that being so, suit is very much maintainable.

8] Support can be drawn from the judgment of this Court in the matter of *Moosabhai Gagji Khetani*, cited supra so also from the judgment of the Apex Court in the matter of *Mahadev P. Kambekar (D) TR LRS*, cited supra in which a specific reference is made to the judgment of the Apex Court in the matter of *Mansukhlal Dhanraj Jain & Ors vs. Eknath Vithal Ogale* reported in (1995) 2 SCC 665. Observations in the said judgment prima facie speak of maintainability of the suit before the Small Causes Court under the provisions of Presidency Small Causes Courts Act in the matter of existence of

dispute *inter se* between landlord and tenant. Once the Petitioner has not disputed status of Defendant Nos. 1 and 3 as that of landlord, suit has to be held to be maintainable within the provisions of Section 41 of the said Act.

9] That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)