

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO.11212 OF 2022

SAGAR MADHUKAR GUNJAL
VERSUS
VIJAY MADHUKAR KESARI

Mr. Gholap Ajit M., Advocate for the Petitioner.
Mr. Sushant V. Dixit, Advocate for the Respondent-sole.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 15, 2023.

PER COURT :

1. Heard.

2. By this petition, the challenge is to the order dated 15th September, 2022 passed by the Civil Judge Senior Division below Exh.65 in RCS No.296 of 2018, where, upon the application filed by the respondent No.1 under Order 14 Rule 2 (2)(a) of the Code of Civil Procedure, 1908, the trial Court has framed the issues which read as under:

“1) Whether this Court is having jurisdiction to try and entertain the suit in present form?”

2) What order?”

3. Learned counsel appearing for the petitioner submits that the suit had been filed under the provisions of Section 34 of

the Specific Relief Act, 1963 seeking that the Petitioner be declared as tenant of the premises in capacity of legal heir of original tenant. He would further submit that the petitioner's father was the tenant of the respondent and after his death, the petitioner continued his business in the tenanted premises and as the respondent refused to acknowledge the petitioner as tenant, RCS No.296 of 2018 came to be filed in which the following relief are claimed:

- “(A) The suit may kindly be allowed.*
- (B) The Plaintiff may please be declared as tenant of the premises in capacity of legal heir of original tenant – Description of Property Advocate office at B 5603, Delhi Gate, Ahmednagar in the interest of justice.*
- (C) The Defendant may please be directed to accept the rent @Rs.50/- + electricity charges @Rs.30/- PM.*
- (D) During pendency of this suit, the Plaintiff may please be permitted to deposit rent in the Court.*
- (E) Any other appropriate and suitable relief to which the Plaintiff found entitle may be granted in favour of Plaintiff and oblige.”*

4. Leaned counsel for the petitioner submits that as the relief is for declaration of status, the provisions of Section 34 of Specific Relief Act applies, and it is the Civil Court which will have the jurisdiction and as such there is no necessity for framing issue of jurisdiction.

5. Per contra, learned counsel appearing for the respondent would submit that the Rent Act would have no application when the purpose of tenancy is profession and as such, an application was made for framing the requisite issue of jurisdiction.

6. Considered the rival submissions of the parties.

7. It is apparent from the pleadings of Regular Civil Suit No.296 of 2018 that the petitioner's father was the tenant of the respondent-landlord and subsequently, by the petitioner is seeking to be declared as a tenant of the premises in the capacity of legal heir of the original tenant. Reliance is being placed on the provision of Section 7 (15) of the Maharashtra Rent Control Act, 1999 (for short, "the Rent Act") to buttress his submission that the petitioner is the tenant of the premises. At this stage, it would be relevant to refer the provisions of Section 33 of the Rent Act, dealing with the jurisdiction of the Court, which reads as under:

33. Jurisdiction of courts.

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdictions,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such court, and

(c) elsewhere, the court of the Civil Judge (Junior Division)

having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887, and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.”

8. In the present case, the respondent-landlord has raised an issue of jurisdiction on the ground that Rent Control Act is not applicable to tenancy when purpose of tenancy is profession, which has been denied by the Petitioner. Provisions of Order 14 of the Code of Civil Procedure, 1908 come into play as issues are framed when material proposition of fact and law is raised by one party

and denied by the other. In such a case, it is necessary that the issue framed and tried. In the present case, learned counsel for the petitioner objects to the framing of the issue on the ground that all the issues are required to be framed and in support thereof the relies upon the provisions of Order 14 Rule (2) which reads as under:

“2. Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

9. In my opinion, considering the provisions of Order 14 Sub-Rule (2) of Rule 2 provides that where issues both of law and of fact arisen in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. In the present case, considering the subject matter, the Trial Court is of the opinion, that as profession for purpose of tenancy is not within the purview of Rent Act, and has framed the issue of law. The submissions of the learned counsel

for the Petitioner that all the issues are required to be framed is legally unsustainable. It is open for the Trial Court to frame the issue of law, if it is satisfied the case or any part thereof can be disposed of on the issue of law and framed.

10. For the reasons above, there is no infirmity in the order dated 15th September, 2022 passed by the Civil Judge Senior Division below Exh.65 in RCS No.296 of 2018.

11. Writ Petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)