

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.17 OF 2023

RITA VINODKUMAR
GOSALIA AND ANR.

... Applicants.

Versus

SHIVPRASAD BALKRISHNA
SINAI KAKODKAR

... Respondent.

Ms Sapna Mordekar, Advocate for the Applicants.

Mr R.G. Ramani, Senior Advocate with Mr Pavan Shetye,
Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 03 August, 2023

P.C:

Heard learned Counsel Ms Sapna Mordekar for the Applicants and learned Senior Advocate Shri R.G. Ramani along with Mr Pavan Shetye for the Respondent.

2. With the consent of both the learned Counsel, the matter is taken up for final disposal at the admission stage itself.
3. Applicant is aggrieved by the order passed by the Trial Court dated 05.05.2023 in Regular Civil Suit No.7/2023 thereby rejecting the application under Order 7 Rule 11 CPC.

4. The Respondent filed a civil suit for permanent and mandatory injunction against Applicant/Defendant claiming the following reliefs:-

- (A) By a Decree of Permanent Injunction, the Defendants be restrained from interfering in the right of the Plaintiff in the suit premises or the tenanted premises, in whatsoever manner, either personally or through their agents, representatives, servants, or through the family members whomsoever;
- (B) By a Decree of Permanent Injunction the Defendants or their agents, representatives, servants, or through the family members be restrained from further demolishing the suit premises in whatsoever manner;
- (C) By a Decree of Permanent Injunction the Defendants be directed to repair the roof of the suit premises and to get it restored to its original condition.

5. It is the contention of the Plaintiff in the plaint that he is a statutory tenant of the suit premises which the Defendant is illegally trying to demolish by obtaining an order from the Municipal Council.

6. Defendant approached the Trial Court with an application under Order 7 Rule 11 CPC claiming therein that the suit is barred under Section 56 of the Rent Control Act. By the impugned order, learned Trial Court rejected such contention.

7. Ms Mordekar appearing for the Applicants strongly contended that bar under Section 56 of the Rent Control Act prohibits the Civil Court

from entertaining the suit. She submitted that Rule 9(2) of the Rent Control Rules, 1969 specifically provided that the proceedings before the Rent Controller and the Rent Tribunal as well as the Appellate Tribunal are required to be conducted as per the provisions of the Mamlatdar's Court Act, 1966. She then submitted that as per Section 4(2) of the Mamlatdar's Court Act, 1966, the Mamlatdar is having power to grant injunction against a person who is attempting to cause destruction or obstruction. She then submitted that power to grant relief could also be considered under Section 35(2) and Section 43(d) of the Rent Control Act. On this basis, Ms Mordekar submitted that the impugned order needs interference.

8. Learned Senior Counsel Mr Ramani appearing for the Respondent submitted that the pleadings in the plaint clearly go to show that Plaintiff is in possession of the tenanted premises and suddenly the Defendant started demolition of the entire building by obtaining some order from the Municipal Council. The suit is filed only for grant of permanent and temporary injunction thereby restraining the Defendant from interfering with the possession of the Plaintiff and from further demolition of the suit premises.

9. Mr Ramani then invited attention of this Court to various provisions of the Rent Control Act and more specifically Chapter II which deals with control of letting, Chapter III which deals with determination of fair rent and Chapter IV that deals with payment and deposit of rent. Similarly, he invited attention to Chapter V which basically deals with control on eviction of tenants. According to Mr Ramani, there is absolutely no provision under the Rent Control Act for a

tenant to seek injunction from eviction by any other means. He would submit that by carrying out demolition of the suit premises, the landlord/Defendant is ultimately trying to dispossess the Plaintiff from his tenanted premises. He would submit that provisions of Section 56 of the Rent Control Act would not be applicable in the present matter as the question which has been raised in the suit cannot be settled, determined or dealt with by the Tribunal, Rent Controller or the Appellate Board as the case may be.

10. In this respect, Mr Ramani placed reliance on the following two decisions:-

(i) *Sau Rajani vs. Sau Smita and Anr; 2022 SCC OnLine SC 1016*, and

(ii) *Packing Paper Products vs. Nicaf Pvt. Ltd. and Anr.; 2007 SCC OnLine Bom 566*.

11. The rival contentions fall for determination as under.

12. It is well settled that while deciding application under Order 7 Rule 11 CPC, only the contents of the plaint and the documents relied therein could be looked into. Thus, contents of the plaint needs to be perused meaningfully to find out whether the Civil Court's jurisdiction is ousted as tried to be claimed by the Defendant.

13. The Plaintiff is claiming to be a statutory tenant on the basis of agreement dated 01.02.1980 in respect of residential block which was initially granted to the father of Plaintiff and thereafter by way of exchange to occupy Block No.6 instead of Block No.7. It is his case that

Plaintiff is in absolute possession of residential Blocks No.5 and 6 of the said building which, the Plaintiff described as the suit tenanted premises.

14. Further, it is claimed in the plaint that somewhere in December, 2021, the electricity connection of the tenanted premises were disconnected illegally and when questioned, it was told that the electricity wiring being very old, required replacement. Somewhere in September, 2022, the Defendant engaged some labour and removed the roof tiles and when questioned, it was told that certain repairs of the roof are required and the same will be restored. However, on 16.02.2023, Defendant started demolition of the premises and succeeded in demolishing Block Nos.1 to 4. Police complaint was lodged on 16.02.2023 itself. Since there was no further action taken, the Plaintiff approached the Municipal Council and objected for the demolition order. Accordingly, the Municipal Council directed the Defendant to stop the demolition any further. In such circumstances, Plaintiff filed the suit with the prayers which are already disclosed above.

15. The learned Trial Court while rejecting the application observed that there is no specific bar for entertaining such suit as the tenant has asked for permanent injunction from further demolishing the suit premises by illegal means and evicting them from the said premises.

16. As rightly pointed out by the learned Senior Counsel Mr Ramani, Rent Control Act though speaks about bar of jurisdiction of other Courts except the Rent Controller, the Tribunal, etc, such bar operates only with regard to the question which is required to be settled, determined or dealt with by or under the said Act by the Rent Controller, Tribunal, etc. Thus,

for operating such bar, there must be some provision under the Act itself for the redressal of the dispute raised by the tenant in the Civil Suit. The Controller is defined under Section 2(d) whereas the Rent Tribunal is defined under Section 2(n). The provisions of Chapter III of the said Act deals with determining of fair rent whereas either the tenant or the landlord is entitled to approach the Tribunal for fixation of their rent.

17. Chapter IV deals with payment and deposit of rent in which the procedure is prescribed for deposit of the rent by the tenant.

18. Chapter V deals with control on eviction of tenant wherein the grounds of eviction are found in Section 22. Similarly, the landlord's right to obtain possession are dealt in Section 23.

19. Ms Mordekar has pointed out that the tenant is entitled to approach the Rent Controller under Section 35 of the Rent Control Act. However, plain reading of this provision shows that the right of a tenant to approach the Rent Controller or the Tribunal is restricted to the eventualities mentioned in Sub-Sections 1, 2 and 3 i.e. when the essential supply to the building is cut off. No doubt in the plaint, Plaintiff has claimed/pleaded that the electricity supply of the entire building was cut off, but there is no prayer for restoration of such electricity supply. Thus, provision of Section 35 will not help the tenant from seeking the relief as claimed in the present suit.

20. Ms Mordekar then would submit that the provision of Section 43 of the Rent Control Act and more specifically Clause (d) could be invoked. Section 43 deals with powers of the Controller, Tribunal or the Appellate Board. However, such powers are necessarily to be attracted

only when such powers are given under the Act. When there is no specific power given to the Tribunal/Controller or the Appellate Board to entertain any application for injunction, the same cannot be assumed with the aid of Section 43.

21. In the case of *Sau Rajani* (supra), the Apex Court while considering the provisions of Section 9 of CPC, discussed its earlier decision in the case of *Dhulabhai. vs. State of Madhya Pradesh; AIR 1969 SC 78* and quoted some references. Similarly in the case of *Ramesh Gobindram vs. Sugra Humayun Mirza; (2010) 8 SCC 726*, is also referred in para 16 wherein it was observed that jurisdiction of Civil Court to try suits of civil nature is expansive and the onus to prove the ouster of jurisdiction is on the party that asserts it. It further observed that even in cases where the jurisdiction of Civil Court is barred by a statute, the test is to determine if the Authority or the Tribunal constituted under the statute has the power to grant reliefs that the Civil Court would normally grant in suits filed before them.

22. Applying the above proposition to the matter in hand and more specifically the prayer clauses in the suit, it is clear that Rent Controller or the Tribunal are not vested with the powers to entertain any application filed by the tenant thereby restraining the landlord either from evicting him illegally or by other means i.e. by demolition of the tenanted premises. Apart from it, in the present matter, pleadings in the plaint show that demolition was carried out as per the orders passed by the Municipal Council on the ground that the premises are in dilapidated condition. When the Plaintiff approached the Municipal Council, such demolition was ordered to be stopped. Documents to that effect are

placed along with the plaint. Thus, the jurisdiction of Civil Court qua the reliefs claimed in the suit cannot be considered as ousted. The learned Trial Court though rejected the application on different reasonings, the relief claimed in such application has been finally rejected.

23. Hence there is no merit in the present revision application which is hereby rejected.

24. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
Date: 2023.08.04
09:39:16 +05'30'