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

CIVIL REVISION APPLICATION NO.128 OF 2020

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Kasam Amin Waikar

... Applicant

V/s.

Amit Vasant Jadhav & Ors.

... Respondents

Mr. V. P. Sawant, Senior Advocate with Mr. Nitin S. Dhumal for the applicant.

Mr. Prajakt M. Arjunwadkar with Mr. Raj S. Satam for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 26, 2023

P.C.:

1. The applicant (defendant) is challenging an order passed by the Civil Court rejecting the application under Order 7 Rule 11(d) of the Civil Procedure Code, 1908, in a suit for possession filed by the respondents.

2. Respondent No.1 filed Special Civil Suit No.42 of 2015 seeking vacant possession of land and for recovery of arrears of rent. Respondent No.1 described the suit property as Final Plot No.508 at Karad, District Satara. According to the plaintiff, the predecessors of the plaintiff let out the suit premises to the defendant's predecessors for the purpose of mill business at a monthly rate of Rs.13.33/-. The applicant, thereafter, closed the mill business and started a garage business. The suit premises on

the date of the suit was not used for any purpose. Arrears of rent are also stated to be ground for seeking possession. The plaintiff stated that despite the issuance of notice dated 31st October 2015, neither arrears of rent were paid nor possession of the suit premises was delivered. Hence, he filed a suit for delivery of possession of the suit premises.

3. The defendant applied for Order 7 Rule 11(d) of the Civil Procedure Code, 1908, contending that provisions of the Maharashtra Rent Control Act, 1999, are applicable to the suit premises. Therefore, the suit before the Civil Court is barred under section 15(2) of the said act.

4. The Trial Court, by the impugned order inter alia, held that the suit premises were originally let out as open land, and the defendants were paying rent only for open land. The Trial Court, therefore, rejected the application under Order 7 Rule 11 of the Civil Procedure Code, 1908.

5. The learned Senior Advocate for the applicant submitted that the suit premises were let out to run a groundnut mill. According to him, therefore, on the date of filing of the suit, the suit premises was being used for the purposes covered under the provisions of the Maharashtra Rent Control Act, 1999, and the construction of a building on the said premises and the rent paid by the defendant lead to only one conclusion that provisions of the Maharashtra Rent Control Act, 1999 are applicable to the suit premises. In support of his submission, he relied on the following judgments:

a) **Nalanikant Ramdas Gujjar vs. Tulasibai** reported in 1996 (5)

SCC 394.

b) **Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman And Others** reported in 1970 (1) SCC 670.

c) **Govindram Bros. Pvt Ltd. And Others vs. Alexander Benedict Joseph Pereira** reported in 1995 (1) Mh.L.J. 115.

6. Per contra, learned advocate for the respondents/original plaintiff submitted that the land described in paragraph No.1 of the plaint was leased to the predecessors of the defendant. What was leased was only land and not the building. Subsequently, construction of the building by the lessee would not attract provisions of section 7(9) of the Maharashtra Rent Control Act, 1999, which defines premises as applicable only to the buildings and not to the lands. In support of his submission, he relied on the following judgments:

a) **Narendra Harilal Jethwa vs Shri Bholadasji Mandir, Nashi And Others** reported in 2019 (6) Mh.L.J. 885.

b) **Savitribai Vishnupati Vaske And Others vs. Faruk Abdulrahim Patel And Others** reported in 2010 (5) Mh.L.J. 357.

7. I have considered the submission on behalf of both sides. The issue involved in the present application is whether the provisions of the Maharashtra Rent Control Act, 1999, are applicable to the suit premises. To adjudicate on the said issue, it is necessary to consider provisions of section 7(9) of the Maharashtra Rent Control Act, 1999, which defines premises as under:

“7. Definitions

In this act, unless there is anything repugnant to the subject or context—

(1) to (8).....

(9) "Premises" means any building or part of a building let or given on licence separately (other than a farm building) including,—

(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;”

8. On meaningful reading of section 7(9) of the said act, it appears that the building or any part of the building let or given on licence separately, including gardens and other fittings affixed to the buildings, are treated as premises. Therefore, it is necessary to decide whether the premises let out was a land or a building. On perusal of the lease deed dated 27th October 1949, it appears that only the land bearing Revised Survey No.717(b) was the subject matter of the lease deed. The purpose of the use of land is stated to be business. It is stated in the said lease deed that if a building is constructed on the said land, on expiry of the lease, the defendant will remove the building and shall deliver vacant possession of land to the plaintiff. The plaintiff has described the suit property as Final Plot No.508, which is the land. Though paragraph No.2 of the plaint describes the purpose of the lease as mill business, it is contended that the suit premises was, thereafter, not used for the mill purpose but was being used for garage

purposes, and part of the suit property remains unused.

9. The Apex Court, in the case of **Kamla Devi vs. Laxmi Devi**, reported in (2000) 5 SCC 646 was considering a question as to whether the suit plot is premises within the meaning of section 2(i) of the Delhi Rent Control Act, 1958. The appellant in the said case had let out one room to the respondent. The respondent built a latrine on the adjoining plot without the landlord's authorisation. The landlord filed suit for an injunction for the demolition of the structure on the adjoining plot, which was compromised. Under the said compromise terms, the tenant agreed to pay the landlord Rs.5/- per month towards the rent of adjoining open land. The landlord, thereafter, filed suit for recovery of possession of adjoining vacant land. The respondent/tenant raised an objection contending that the adjoining plot, which was described as suit premises, comes under the definition of premises contained in section 2(i) of the Delhi Rent Control Act, 1958. Therefore, the Civil Court's jurisdiction is barred. The Apex Court, after considering definitions of landlord, premises and tenant contained in section 2(e)(i)(l), held that the term "premises" implies subject matter of tenancy in respect of which there is jural relationship of landlord and tenant and in respect of which the quantum of rent is agreed to between them. The Apex Court, in paragraph No.11 of the said judgment, observed as under:

“11. When, in any case, the question arises whether an open plot of land or a plot of land with structures thereon, was let out, the court has to determine the same on the facts of that case. In deciding this question, it will be useful to bear in mind that if a plot with a structure was let out it will fall

within the meaning of the term “premises” but if an open plot without any structure was let out then it does not fall within the meaning of the term “premises”. It is immaterial whether the tenant raised structures before the creation of the tenancy or after he was let in as a tenant. In either case, the tenant alone will have the proprietary rights in the structure and not the landlord.”

10. The extracted portion of paragraph 11 of the said judgment indicates that to decide a question as to whether an open plot of land and plot along with structures was let out, the Court needs to consider whether the plot along with structure was let out and in that case, it will fall within the meaning of term "premises" but if it is held that open plot without any structure was let out then it will not fall within the meaning of term "premises". It is observed that whether the tenant raised the structure before the creation of tenancy or after he was let in as a tenant is immaterial.

11. In the facts of the present case, from the averments in the plaint and the material on record, including the lease deed, prima facie, it appears that only a plot of land without a building was let out to the defendant to run the mill. Therefore, any construction on the plot after it was let out would be of no consequence to attract provisions of the Maharashtra Rent Control Act.

12. Learned Senior Advocate relied on the judgment in the case of **Nalanikant Ramdas Gujjar vs. Tulasibai** reported in 1996 (5) SCC 394. In the facts of the said case, the Apex Court was considering the conflict of two judgments of the Apex Court in the context of the applicability of the term "premises" under section 5(8) of the Bombay Rent Control Act, 1999. The term "premises"

as it stood at the relevant time was as under:

“5.(8) ‘premises’ means—

- (a) any land not being used for agricultural purposes,
- (b) any building or part of a building let or given on licence separately (other than a farm building) including—
 - (i) the garden, grounds, garages and outhouses, if any, appurtenant to such building or part of a building,
 - (ii) any furniture supplied by the landlord for use in such building or part of a building,
 - (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,
 but does not include a room or other accommodation in a hotel or lodging house.”

13. The Apex Court was deciding the question of applicability of clause (a) of section 5(8) of the Bombay Rent Control Act, 1999. In the facts of the said case, the land was let out for the purpose of setting out ginning and pressing machines and for the construction of godown to store cotton. The tenant constructed, including godown over the leasehold area, and installed ginning and pressing machines. According to the appellant in the said case, the lease was granted in respect of vacant land; therefore, the Bombay Rent Control Act, 1999 provisions would not apply. Therefore, the question that arose for consideration of Apex Court was whether the use of land as contemplated under section 5(8)(a) for agricultural purposes needs to be on the date of filing of suit or the date of lease creation. It is held by the Apex Court that once a piece of land was used for agricultural purpose on the date of

filing of suit, such land will be covered by the definition of "premises" under section 5(8) of the Bombay Rent Control Act, 1999. The emphasis was supplied to the word "not being used" of clause (a) of section 5(8) of the Bombay Rent Control Act, 1999 and since, on the date of suit, the land was put to use for non-agricultural purposes, it was held that the provisions of the Bombay Rent Control Act, 1999 and in particular section 5(8)(a) of the Bombay Rent Control Act, 1999 is applicable.

14. In the facts of the present case, section 7(a) of the Maharashtra Rent Control Act, 1999, which defines premises, does not contain the expression "any land not being used for agricultural purpose". The definition of "premises" refers to only buildings or part of the building. Therefore, in my opinion, judgment in the case of **Nalanikant Ramdas Gujar** (supra) is inapplicable to the facts of the case.

15. In so far as judgment in the case of **Govindram Bros. Pvt Ltd. And Others** (supra) is concerned, a question which arose for consideration of Single Judge was whether the use of land on the date when rights were created or on the date of filing of suit need to be taken into consideration. In the facts of the said case, again, it was a case of applicability of the Bombay Rent Control Act, 1999, which contained section 5(8)(a), which is absent in section 7(9) of the Maharashtra Rent Control Act, 1999. Moreover, in view of the authoritative pronouncement of the Apex Court in the case of **Kamla Devi** (supra), this Court is bound by the judgment in the case of **Kamla Devi** (supra).

16. In the case of **Vasudev Dhanjibhai Modi** (supra), the Apex Court was dealing with an objection raised under section 47 of the Civil Procedure Code, 1908, where the question of applicability of Bombay Rent Control Act, 1999 to the premises was raised before the executing Court. The Apex Court held that to decide a question as to whether the decree passed was without jurisdiction, it was necessary to determine facts of the decision which is impermissible for the executing Court. The interpretation of the terms of the agreement to lease and its use are not the questions which can be raised before the executing Court. It is only if the decree on the face of it is without jurisdiction that such objection can be raised. The facts of the present case are different. Hence, the said judgment is inapplicable.

17. On overall consideration of the impugned order and the facts of the case, I am satisfied that there is no error of jurisdiction committed by the Trial Court while rejecting the application under Order 7 Rule 11.

18. Hence, the civil revision application is dismissed. No costs.

19. Considering the fact that this Court had granted a stay to the further proceedings of the suit, the said ad-interim relief is extended for a period of six weeks from today.

(AMIT BORKAR, J.)