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

WRIT PETITION NO.1832 OF 2023

M/s Alfa Mana Realtors Pvt. Ltd. ...Petitioner

V/s.

Smt. Sugandha Pandurang Kharat ...Respondents
& Anr.

Mr. Surel Shah a/w Mr. Abbas Zaidy, Mr. Aditya A.
Kavale i/by Zohair & Co. for Petitioner.

CORAM: MADHAV J. JAMDAR, J.

DATE: 17th MARCH 2023

P.C.:

1. Heard Mr. Surel Shah, learned Counsel appearing for the
Petitioner.

2. By the present petition filed under Article 227 of the
Constitution of India, the Petitioner has challenged the legality
and validity of order dated 20th April 2022 passed by the
learned Judge, Small Causes Court, Mumbai below Exhibit-19 in
R.A.D. Suit No.235 of 2018 as well as order dated 22nd
December 2022 passed by the learned Revisional Court of Small
Causes, Mumbai in Revision Application No. 142 of 2022.

3. The Petitioner-Defendant No.1 is the landlord. The Petitioner filed said application bearing Exhibit 19 in R.A.D. Suit No.235 of 2018 under Order VII Rule 11(d) of Code of Civil Procedure, 1908 seeking rejection of plaint. The said application was rejected and order passed thereon was confirmed by the Revisional Court.

4. It is the case of the Respondent No.1, who is the Plaintiff in the said suit bearing R.A.D. Suit No. 235 of 2018 that she was the tenant of the suit premises and Defendant No.1 is the landlord undertaking re-development of the said Chawl and agreed to provide the Plaintiff a permanent alternate accommodation and therefore twelve cheques for the period of 1st September 2013 to 31st August 2014 were handed over to her. In the meantime, Defendant No.1 i.e. the present Petitioner offered to acquire suit premises for total consideration of Rs.70,00,000/- and accordingly paid a sum of Rs.20,00,000/- as an advance. Accordingly registered tripartite agreement of transfer of tenancy dated 5th June 2014 was executed between the Plaintiff, Defendant No.1 and Defendant No.2. By the said agreement, the Plaintiff has agreed to surrender the tenancy in favour of new incoming tenant i.e. Defendant No. 2. However, it is the case of the Plaintiff that the Defendant No.1 failed and neglected to pay the balance consideration. In fact, thereafter

the entire property, where the suit premises were situated was demolished, and the Plaintiff was allotted temporary transit accommodation on 12th August 2016. It is her case that towards fulfilment of balance payment, four cheques were handed over, out of which three cheques are for an amount of Rs.12,00,000/-, each dated 23rd February 2017, 5th March 2017 and 15th March 2017 and one cheque is for an amount of Rs.12,44,000/- dated 31st March 2017.

5. It is the contention of the Plaintiff that the cheque of Rs.12,00,000/- dated 23rd February 2017 was honoured, however another cheque dated 5th March 2017 of Rs.12,00,000/- was dishonoured. The Plaintiff, therefore immediately contacted Defendant No.1, however, the further payment remains unpaid till date. It is the case of the Plaintiff that therefore agreement for transfer of tenancy dated 5th June 2014 was orally rescinded by the Plaintiff and forfeited the amount paid therein. Therefore, the Plaintiff has filed said suit *inter alia* claiming following reliefs:

"(a) It be declared that the Plaintiff continues to be the tenant of Defendant No.1 in respect of Room No. 25, Ground Floor, Jariwala Chawl No.3, 35/35-C, Nesbit Road, Mazgaon, Mumbai - 400 010 which is surrendered by her for redevelopment in lieu thereof she has been allotted Room No.1904, 19th Floor, Piramal Compound, Gandhi Nagar, Near Laxmi Industries, Next to Marathon Building, Lower Parel,

Mumbai 400 013;

(b) This Hon'ble Court be pleased to order and direct the Defendant No.1 to allot permanent accommodation on their completing the redevelopment as per norms at par with other tenants by earmarking, identifying and reserving the premises to be allotted to the Plaintiff;

(c) This Hon'ble Court be pleased to order and direct the Defendant No.1 to execute registered documents for allotment of said permanent accommodation with the Plaintiffs;

(d) It be declared that the agreement for transfer of tenancy dated 05/06/2014 executed between the Plaintiff and Defendant No. 1 transferring the rights in respect of suit premises in favour of Defendant No. 2 is *non-est*, not maintainable and is required to be cancelled on account of failure on the part of Defendant No.1 to pay the consideration till date;

(e) The Defendant, their servants, agents and all persons claiming through or under them be permanently restrained by an order and injunction of this Hon'ble Court from interfering with and/or disturbing the Plaintiffs' exclusive use, occupation and possession of the temporary accommodation viz. Room No.1904, 19th Floor, Piramal Compound, Gandhi Nagar, Near Laxmi Industries, Next to Marathon Building, Lower Parel, Mumbai 400 013 handed over by the Defendant no.1 in lieu of the suit premises viz. Room No. 25 on the Ground Floor, of Jariwala Chawl No.3, 35/35-C, Nesbit Road, Mazgaon, Mumbai - 400 010 in any manner whatsoever."

6. It is the contention of Mr. Shah, learned Counsel appearing for the Petitioner that the suit is for rescission and cancellation

of said tenancy agreement dated 5th June 2014. He submitted that Section 19(h) and (j) of the Presidency Small Causes Court Act, 1882 clearly provides that the Small Cause Court have no jurisdiction in respect of suits for specific performance or rescission of contracts or for cancellation or rectification of instruments. However, it is to be noted that for the purpose of application for rejection of plaint under Order VII, Rule 11(d) of Code of Civil Procedure, 1908 what is relevant are the contents of the plaint. In the plaint, it is the contention of the Plaintiff that as the said agreement of surrender of tenancy has not been complied with, she continues to be the tenant of the suit premises. Therefore, the reliefs which are sought in the plaint are that the Plaintiff be declared as continued to be the tenant with respect to the suit premises and to allot her permanent accommodation.

7. It is the admitted position that the said property is being redeveloped and in fact the Plaintiff has been allotted alternate premises. As per the provisions of Development Control Regulation for Greater Mumbai, 1991, the Plaintiff in her capacity as tenant is entitled for permanent accommodation and relief is regarding right as tenant. Prayers (b) and (c) is regarding right in furtherance of her claim of tenancy. As far as prayer clause (d) is concerned the same is regarding the said

agreement, the Plaintiff is seeking declaration that such transfer of agreement for transfer of tenancy dated 5th June 2014 be declared as *non est*, not maintainable and is required to be cancelled on account of failure on the part of Defendant No.1 to pay the consideration till date.

8. It is settled legal position that Under Order VII, Rule 11(d) of Code of Civil Procedure, the plaint can either be rejected completely or the plaint cannot be rejected.

9. Perusal of prayer clauses and the contents of the plaint clearly show that the Small Causes Court has got jurisdiction to entertain and adjudicate the same.

10. Mr. Shah, learned Counsel appearing for the Petitioner has relied on the judgment in the case of **Prabhudas Damodar Kotecha & Ors. V. Manhabala Jeram Damodar & Anr.**¹ In the said case, the Supreme Court was considering Section 41 of the Presidency Small Causes Court Act, 1882 and Section 28 of the Bombay Rent Act. It has been held in paragraphs 39 and 40 as follows:

"39. When we look at both the provisions, it is clear that the nature of such suits as envisaged by both the sections is the same. In this connection, a reference may be made to the judgment of this Court in Mansukhlal Dhanraj Jain case wherein this court has dealt with a question whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor who is

¹ (2013) 15 Supreme Court Cases 358

said to be threatening to disturb the possession of the plaintiff licensee without following due process of law is cognizable by the Court of Small Causes Bombay as per Section 41(1) of the PSCC Act or whether it is cognizable by City Civil Court, Bombay? This Court while dealing with that question held that the Court of Small Causes have jurisdiction and that in Section 41(1) of the PSCC Act and Section 28 of the Bombay Rent Act, 1947, *pari materia* words are used, about the nature of the suits in both these provisions, for conferring exclusive jurisdiction on Small Causes Courts. Paragraphs 17 and 18 of that judgment would make it clear that in that case this Court only observed that some expressions in [Section 28](#) of the Rent Act only are *pari materia* with the expressions employed in [Section 41\(1\)](#) of the Small Cause Court and not stated that the PSCC Act and the [Rent Act](#) are *pari materia* statutes.

40. We may in this respect refer to [Section 51](#) of the Rent Act which provides for the removal of doubt as regards proceedings under Chapter VII of the PSCC Act which states that for removal of doubt, it is declared that unless there is anything repugnant in the subject or context references to suits or proceedings in this Act shall include references to proceedings under Chapter VII of the PSCC Act and references to decrees in this Act shall include references to final orders in such proceedings. The Full Bench of the Bombay High Court, in our view, is right in holding that [Section 51](#) of the Rent Act will have to be read with [Section 50](#). The Court rightly noticed that on the date when the [Rent Act](#) came into force, there were two types of proceedings for recovery of possession pending in two different courts in the City of Bombay, that is, proceedings under Chapter VII were pending in the Small Cause Court and also suits were pending on the Original side of the High Court. [Section 50](#) provides that suits pending in any court which also includes the High Court shall be transferred to and continued before the courts which would have jurisdiction to try such suits or proceedings under the [Rent Act](#) and shall be continued in such Courts as the case may be and all provisions of the [Rent Act](#) and the Rules made thereunder shall apply to all such suits and proceedings. In other words, the suits pending in the High Court would be transferred to the Small Causes Court and would be heard and tried there and all the provisions of the [Rent Act](#) and the Rules

made thereunder would apply to such suits. [Section 50](#) also provided that all proceedings pending in the Court of Small Causes under Chapter VII shall be continued in that court and all provisions of the [Rent Act](#) and the Rules made thereunder shall apply to such proceedings. Pending proceedings under Chapter VII were to be continued as proceedings under the [Rent Act](#) and all provisions and the Rules under the [Rent Act](#) were to apply to such proceedings."

11. The Supreme Court in paragraphs 57 to 59 has held as follows:

"57. We are of the considered view that the High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the "landlord and tenant" and the "licensor and licensee" under one umbrella to avoid unnecessary delay, expenses and hardship. **The act of the legislature was to bring all suits between "landlord and tenant" and "licensor and licensee" whether under the [Rent Act](#) or under the PSCC Act under one roof. We find it difficult to accept the proposition that the legislature after having conferred exclusive jurisdiction in one Court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction.** The various amendments made to [Rent Act](#) as well the Objects and Reasons of the Maharashtra Act 19 of 1976 would clearly indicate **that the intention of the legislature was to avoid unnecessary delay, expense and hardship to the suitor or else they have to move from the one court to the other not only on the question of jurisdiction but also getting reliefs.**

58. We are of the view that in such a situation the court also should give a liberal construction and attempt should be to achieve the purpose and object of the legislature and not to frustrate it. In such circumstances, we are of the considered opinion that the expression licensee employed in [Section 41](#) is used in general sense of the term as defined in Section 52 of the Indian Easements Act.

59. We have elaborately discussed the various legal principles and indicated that the expression 'licensee' in Section 41(1) of the PSCC Act would take a gratuitous licensee as well. The reason for such an interpretation has been elaborately discussed in the earlier part of the judgment. Looking from all angles in our view the expression 'licensee' used in the PSCC Act does not derive its meaning from the expression 'licensee' as used in Sub-section (4-A) of [Section 5](#) of the Rent Act and that the expression "licensee" used in [Section 41\(1\)](#) is a term of wider import intended to bring in a gratuitous licensee as well."

(Emphasis added)

12. Thus, what has been held is that all the disputes between landlord and tenant can be adjudicated by the Small Causes Court.

13. Mr. Shah also pointed out the judgment of the Supreme Court, in the case of **Mansukhlal Dhanraj Jain V. Eknath Vitthal Ogale**². In that case in paragraph 16 it has been held that phrase "relating to recovery of possession" as found in Section 41(1) of the Small Causes Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee. It has been held in paragraph 18 when Section 41(1) of the Small Causes Act is read in juxtaposition with the aforesaid Section 28 of the Bombay Rent Act, it becomes clear that *pari materia* words are used about nature of suits in both these provisions for conferring

² (1995) 2 SCC 665

exclusive jurisdiction of Small Causes Courts, namely they alone can entertain such suits or proceedings relating to recovery of possession of premises.

14. Mr. Shah also relied on judgment of the Supreme Court in the case of **R. Kanthimathi & Anr. V. Beatrice Xavier (Mrs.)**³, which shows that any jural relationship between two persons could be created through an agreement and similarly could be changed through an agreement subject to the limitations under the law. It has been held that when the landlord decided to sell the property to the tenant and the tenant agreed by entering into an agreement, they by their positive act changed their relationship as purchaser and seller and therefore their relationship of landlord and tenant ceases. In the present case, the said agreement of tenancy dated 5th June 2014 clearly demonstrates that the Plaintiff is the existing tenant. As per said agreement, Defendant No.2 agreed to be inducted as incoming tenant, however, the contentions raised in the plaint clearly show that the agreed consideration which was paid by cheque was not honoured and therefore the suit has been filed for declaration of tenancy. Therefore the said judgment of the Supreme Court will have no application to the facts of the present case.

³ (2000) 9 Supreme Court Cases 339

15. Mr. Shah also relied on judgment of this Court dated 31st July 2013 passed in **Civil Revision Application No. 598 of 2012**. However, in the said case, in the suit which has been filed in Small Causes Court, relief was claimed that the Plaintiff continues to be a lessee having undivided share to the extent of 1/3rd leasehold rights that is assets of partnership firm and that transaction which are subject matter of the said suit be declared as illegal, void ab initio and non-est and not binding on the Plaintiff. However what is important to note is the finding recorded in the context of said prayers by the High Court. In paragraph 17 the High Court has held that in the said suit, the Plaintiff is actually agitating his grievance against the partners of the firm and is seeking declaration that the said transaction is not binding upon him and further seeks reliefs of cancellation of said transaction. In that view of the matter, it has been held that the Courts constituted under the provisions of Rent Control Act would not be in a position to grant the relief. Therefore, the said judgment is of no assistance to the contention of the Petitioner.

16. It is also the contention of Mr. Shah that prayer clause (d) is the main relief regarding the agreement for transfer of tenancy and the relief prayed is that the transfer of the rights in respect of suit premises be declared as *non est*, not maintainable and required to be cancelled. However perusal of

the plaint clearly shows that the Plaintiff is seeking declaration of tenancy and other prayers are in aid of said declaration. In any case, the present application is filed before the learned Trial Court under the provisions of Order VII, Rule 11(d) of Code of Civil Procedure seeking rejection of the plaint. It is settled legal position that the plaint can be rejected completely or the same cannot be rejected at all. It is not possible to reject the plaint only with respect to one of the prayers.

17. It has been held by a Bench of three learned Judges of the Supreme Court in **Babulal Bhuramal V. Nandram Shivram**⁴ that the suit for declaration that one of the Plaintiffs was the tenant of the Defendant-landlord and the other Plaintiffs were his sub-tenants and they were entitled to be protected from eviction squarely falls within the exclusive jurisdiction of the Small Causes Court, Bombay.

18. For the above reasons, there is no substance in the contention of the Petitioner. Therefore, the petition is dismissed, however, with no order as to costs.

19. Mr. Shah, learned Counsel appearing for the Petitioner fairly pointed out various judgments on the point and efficiently assisted the Court.

(MADHAV J. JAMDAR, J.)

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