

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1725 OF 2023**

Ratnamala Mohan Aklujkar
of Mumbai, Indian Inhabitant,
Age : 42 years, Occu : not known,
R/o. Room No.14, 3rd Floor, Bhagwan
Bhavan, 15/37, Dadi Santok Lane,
Chira Bazar, Mumbai – 400002

...Applicant
(Defendant)

Versus

1. Smt. Sushila Nirmalkumar Rungta,
(Deleted since Deceased) Thr. LRs.

1(a). Nirajkumar Nirmalkumar Rungta,
Aged about 41 years

1(b). Bharti Saraf,
Aged about 45 years,
Both are R/o. 88-A, Rungta House,
Rungta Lane, Nepeansea
Mumbai - 400006

...Respondent
(Original Plaintiff)

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Mr. Chandrakant Chavan for the Petitioner.
Mr. Swanand Ganoo a/w Mr. Jeetendra Mishra i/by Ms. Neeta
Solanki for the Respondent.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 11 OCTOBER, 2023

PRONOUNCED ON : 29 NOVEMBER, 2023

JUDGMENT :

1. This Writ Petition is filed under Article 227 of the Constitution of India, challenges the Judgment and Order dated 20 December, 2022 passed by the Appellate Bench of the Court of Small Causes at Bombay in Appeal No.258 of 2021, which had quashed and set aside the Order dated 1 September, 2021 passed by the Single Judge of the Court of Small Causes.
2. The Petitioner is the Original tenant in an Eviction Suit and the Respondents are the Legal Heirs of Original landlord.
3. The landlord filed a Eviction Suit under Section 16(1)(a) and (b) of the Maharashtra Rent Control Act, 1999, being R.A.E. Suit No.251/365 of 2010, before the Court of Small Causes at Bombay.
4. Defendant/tenant after being served with the writ of summons appeared in the matter and filed her Written Statement, thereby denying the contentions of the Plaintiff. Soon thereafter, issues were framed and evidence of the parties was recorded.
5. On 18 March, 2021, the Defendant/tenant filed an

Application (Exh.52) for rejection of Plaint. On the ground that Plaintiff by way of conveyance dated 18 September, 2019 sold the building in which the Suit Premises existed to Mrs. Mamta Anil Jain and Mr. Anil Jain. Therefore, since the Plaintiff ceased to be the owner/the relationship of landlord and tenant came to an end, hence the cause of action does not survive and as such the Suit is not maintainable and it is barred under the provisions of CPC. As a consequence, the Suit filed by the Plaintiff be dismissed or the Plaint be rejected.

6. The Plaintiff filed their reply to the said Application. So also the Defendant filed rejoinder to the reply of the Plaintiff.

7. The Single Judge of the Court of Small Causes at Bombay thereafter heard both the parties and by its Judgment and Order dated 1 September, 2021 allowed the Application of the Defendant, thereby rejecting the Plaint and dismissing the Suit.

8. Being aggrieved by the rejection of the Suit, the Plaintiff filed an Appeal bearing No.258 of 2021 before the Appellate Bench of the Court of Small Causes at Bombay. The Appellant Bench heard both the sides and by its Judgment and Order dated 20

December, 2022 allowed the Appeal of the Plaintiff thereby setting aside the Judgment and Order dated 1 September, 2021 passed in R.A.E. Suit No.251/365 of 2010.

9. Being dissatisfied with the Judgment and Order dated 20 December, 2022, the Defendant filed the present Writ Petition challenging the impugned Judgment and Order passed by the Appellate Bench of the Court of Small Causes at Bombay on 20 December, 2022.

SUBMISSIONS :

10. Mr. Chandrakant Chavan made his submissions on behalf of the Petitioner/tenant.

10.1. Mr. Chavan submitted that the Appellate Bench of Small Causes Court erred in setting aside a well reasoned Order passed by the Single Judge of the Court of Small Causes.

10.2. Mr. Chavan further submitted that the Appellate Bench erred in not considering the fact that the Trial Court has exercised its jurisdiction under Section 151 of CPC and therefore, the Appellate Bench ought not to have disturbed discretionary Order passed by the Trial Judge.

10.3. Mr. Chavan further submitted that the Appellate Bench erred in not considering the provisions of Order I, Rule 10 and Order VII, Rule 11, as well as Order XXII, Rule 10 of CPC in proper perspective.

10.4. Mr. Chavan submitted that the provisions of Section 33 of Maharashtra Rent Control Act and Section 41 of the Presidency Small Causes Court Act, were not considered in proper perspective.

10.5. Mr. Chavan further submitted that once it was admitted that the Suit Premises has been sold by the Plaintiff to a third party on 18 September, 2019, the relationship of landlord and tenant between the parties comes to an end and hence, there does not exist any cause of action against the Defendant. In fact the Court of Small Causes lost its jurisdiction to decide and entertain the Suit.

10.6. Mr. Chavan relied upon the following Judgments to buttress his submissions :

i. Laxmidas Moraji (Dead) by L.Rs. V/s. Behrose Darab Mandan¹

ii. Pukhraj Jain V/s. Mrs. Padma Kashyap and another²

¹ 2010(1) Bom.C.R. 452

² AIR 1990 SC 1133

*iii. Shantilal Thakordas and others V/s. Chimanlal Maganlal Telwala*³

*iv. Om Prakash Gupta V/s. Ratan Singh & Anr.*⁴

*v. S.P. Chengalvaraya Naidu (Dead) by L.Rs. V/s. Jagannath (Dead) by L.Rs. & Others*⁵

*vi. Shipping Corporation of India Ltd. V/s. Machado Brothers and Others*⁶

*vii. Ranjit Singh V/s. K.K. Sikand & Another*⁷

11. On the other hand Mr. Swanand Ganoo appeared on behalf of the Respondent/Original Plaintiff and made his submissions:

11.1. Mr. Ganoo submitted that the Appellate Bench has considered the correct position in law and has passed the impugned Judgment and Order thereby quashing and setting aside the Judgment of Single Judge of Small Causes Court.

11.2. Mr. Ganoo submitted that the Suit for Eviction was filed on the grounds of tenant committing an act contrary to the provisions of Clause (O) of Section 108 of Transfer of Property Act and on the ground of erection of permanent structure on the

3 AIR 1976 SC 2358

4 1962 SCR 259

5 AIR 1994 SC 853

6 AIR 2004 SC 2093

7 1996 A I HC 754

premises without landlord's consent. He further submitted that eviction was not on the ground of *bona fide* requirement, therefore, the Suit could never come to an end, just because there is a change in the ownership of the Suit Premises.

11.3. Mr. Ganoo submitted that the cause of action for filing a Suit does not come to an end by change of ownership in an Eviction Suit.

11.4. Mr. Ganoo further submitted that Deed of Conveyance specifically mentioned about the pendency of Suit and the said aspect has to be considered during the Trial and not in a summary manner. He further submitted that non obtaining leave of the Court cannot be fatal to the Suit, as per the provisions of Order XXII, Rule 10 of CPC.

11.5. Mr. Ganoo further submitted that the law on the issue is quite settled by the Supreme Court in various decisions.

11.6. Mr. Ganoo laid emphasis on the Judgment of *Dhurandhar Prasad Singh V/s. Jai Prakash University and Others*⁸ and the Judgment of Supreme Court in *Sharadamma*

⁸ (2001) 6 SCC 534

V/s. Mohammed Pyarejan (Dead) through L.Rs. And others⁹.

11.7. Mr. Ganoo further submitted that the Judgment of the *Dhurandhar Prasad Singh (supra)*, was not properly considered by the Trial Court. However, the Appellate Court has considered the same in correct manner and accordingly the Appeal was allowed.

11.8. Mr. Ganoo submitted that there is no infirmity in the impugned Judgment and hence, no interference is called for.

ANALYSIS & CONCLUSION :

12. The Defendant had filed an Application (Exh.52) for rejection of the Plaint, contending therein that the Plaintiff sold the Suit Premises to one Mrs. Mamta Anil Jain and Mr. Anil Jain by Deed of Conveyance dated 18 September, 2019, which fact came to the knowledge of Defendant around December, 2020. Consequently by her letter dated 13 January, 2021, Defendant sent rent to the new owners i.e. Mrs. Mamta Anil Jain and Mr. Anil Jain, however, the new owners refused to accept the rent on the ground that the Eviction Suit was pending against the Defendant, and accordingly returned back the cheque to the Defendant.

9 (2016) 1 SCC 730

13. The said Application of the Defendant for rejection of the Plaintiff was allowed by the Trial Court, and accordingly Plaintiff was rejected and the Suit was dismissed with a finding that no leave was obtained and further relationship of landlord and tenant had come to an end. However, the Appellate Bench of Small Causes Court at Bombay allowed the Appeal and restored the Suit back to the file on the basis of finding that the Application (Exh.52) filed by the Defendant for rejection of the Plaintiff is not based on any of the grounds as mentioned in the provisions of Order VII, Rule 11 of the C.P.C. Further it was held that there cannot be dismissal of the Suit on account of failure of assignee to file an Application to continue the proceedings, he can continue the proceedings for the benefit of assignee. It was also held that the Trial Court did not take into consideration the Judgment of Supreme Court in *Dhurandhar Prasad Singh (supra)*.

14. There is no dispute that the Plaintiff during the pendency of the Suit by way of conveyance dated 18 September, 2019, sold the Suit Premises to Mrs. Mamta Anil Jain and Mr. Anil Jain. The Defendant is aware of this happening as they had sent Rent to the new owners. However, new owners (Mrs. Mamta Anil

Jain and Mr. Anil Jain) did not accept the Rent sent by letter dated 13 January, 2021, by the Defendant, as the Suit for Eviction was pending against the Defendant. For this reason, it can be concluded that the new owners (Mrs. Mamta Anil Jain and Mr. Anil Jain) were aware about the pendency of Eviction Suit.

15. It will be important to consider the provisions of Order XXII, Rule 10 of the CPC, which reads thus :-

10. Procedure in case of assignment before final order in suit. *-(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule(1).

16. The said Rule 10 of Order XXII does not provide for rejection of the Plaint or for dismissal of the Suit. Only because the assignee did not file an Application seeking leave of the Court to continue with the Suit; the Suit is not supposed to be dismissed. This according to me cannot be the interpretation of the provisions of Order XXII, Rule 10 of the CPC.

17. The Supreme Court in the case of *Dhurandhar Prasad Singh (supra)*, has held that the legislature has not prescribed in case where Rule 10 applies, any procedure; like Rules 3, 4 and 10 of Order XXII of the CPC, which prescribes that in the event of failure to apply for leave of the Court to continue the proceedings by or against the person upon whom interest has devolved during the pendency of a Suit, this shows that the legislature was conscious of this eventuality and has not prescribed that failure would entail dismissal of the Suit as it intended that the proceedings would continue by or against the original party although he ceased to have any interest. Paragraph No.6 of the said Judgment reads as under :-

“6. In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned. Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10

provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer Interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest had devolved. The legislature while enacting Rules 3, 4 and 10 has made a clear-cut distinction. In cases covered by Rules 3 and 4, If right to sue survives and no application for bringing the legal representatives of a deceased party is filed within the time prescribed, there is automatic abatement of the suit and procedure has been prescribed for setting aside abatement under Rule 9 on the grounds postulated therein. In cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit which shows that the legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was Intended that the proceeding would continue by or against the original party although he ceased to have any Interest in the subject of dispute in the event of failure to apply for leave to continue by or against the

person upon whom the Interest has devolved for bringing him on the record.”

[emphasis supplied]

18. The Supreme Court in the Judgment of *Sharadamma (Supra)*, has held that there cannot be dismissal of the Suit on account of failure of filing an Application to continue the proceedings. It would open to the assignor to continue the proceedings for the benefit of assignee. Paragraph No.5 of the said Judgment reads as under :-

“5. A bare reading of the provisions of Order 22 Rule 10 makes it clear that the legislature has not envisaged the penalty of dismissal of the suit or appeal on account of failure of the assignee to move an application for impleadment and to continue the proceedings. Thus, there cannot be dismissal of the suit or appeal, as the case may be, on account of failure of assignee to file an application to continue the proceedings. It would be open to the assignor to continue the proceedings notwithstanding the fact that he ceased to have any Interest in the subject-matter of dispute. He can continue the proceedings for the benefit of assignee.”

[emphasis supplied]

19. In the present proceedings the Suit was filed on the grounds as contemplated under Section 16(1)(a) and (b). It would have been totally different case if the Suit was filed under Section 16(1)(g)- ground of *bona fide* requirement. Since the need would

have ended if the landlord has sold the Suit Premises during the pendency of the eviction proceedings.

20. The Petitioner's counsel has relied upon few Judgments in support of his contentions. The first Judgment of *Laxmidas Moraji (Supra)*, the facts were whether a notice for eviction is necessary when the ground for eviction was of arrears of rent, to a person who accordingly to landlord is not a tenant. The tenant had prepared her last 'Will' appointing trustees. The Suit was dismissed by Small Causes Court so also, by Appellate Bench and by High Court. Further even Supreme Court upheld the Order. Therefore, the facts were quite different therefore, the findings to this Judgment has no relevance to the present proceedings.

20.1. In *Pukhraj Jain (Supra)*, the Supreme Court held that the term landlord would include his legal representative. It held that legal representative of landlord can initiate and continue proceedings for recovery of possession. According to me even this Judgment does not help the Petitioner.

20.2. In *Shantilal Thakordas (Supra)*, the proceedings were filed under Section 13(1)(g) of the Bombay Rent Act, therefore,

the same cannot be compared with the present proceedings, which is under Section 16(1)(a) and (b) of the Maharashtra Rent Control Act.

20.3. In *Om Prakash Gupta (Supra)*, the ground for eviction was again of *bona fide* requirement of the landlord, therefore, the same cannot be compared with the present proceedings.

20.4. In *S.P. Chengalvaraya Naidu (Supra)*, it was a case of a fraud by litigant of obtaining a preliminary decree for partition of property. Therefore, the facts in the Judgment were quite different.

20.5. In *Shipping Corporation of India Ltd. (Supra)*, the facts pertain to service of an employee. The counsel for the Petitioner did not show any relevance of Service Law proceedings with the present Rent Act proceedings.

20.6. *Ranjit Singh (Supra)*, Judgment pertains to Single Judge of Punjab and Haryana High Court. The Suit on the ground of arrears of rent under the *East Punjab Urban Rent Restriction Act, 1949* was dismissed. The Advocate for the Petitioner has not shown any identical provisions of *East Punjab Urban Rent Restriction Act, 1949* and the *Maharashtra Rent Control Act, 1999*.

20.7. Hence, none of the Judgments mentioned above are of any help to the Petitioner.

21. I am of a view that it would always be open for the Original Plaintiff/erstwhile owner to continue with the proceedings, for the benefit of the new owner, when the new owner is aware about the pendency of the Eviction Suit.

22. As a sequel to the above discussion, in my opinion, there is no merit in the Writ Petition, and the same is accordingly dismissed. No costs.

(RAJESH S. PATIL, J.)