



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.133 OF 2023

PTB Hospitality LLP Through its Partners Applicants

Vs.

Jayanti Danabhai Patel & Ors. Respondents

Mr. R. B. Huded and Mr. M. V. Chavan for the Applicants.
Mr. Jaideep Deo for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 26th OCTOBER 2023.

P. C.

1. Heard.

2. The challenge in the Revision Application is to the Order dated 9/2/2023 passed below Exhibit-80 in Suit No.192/2019 rejecting the revision Applicant's Application under Order 7 Rule 11 of CPC seeking rejection of the plaint. At the outset, learned counsel appearing for the Applicants submits that although various clauses of Order 7 Rule 11 of CPC were pressed into service, today he is pressing clause (b) and (d) of Rule 11 of Order 7.

3. As regards the issue of maintainability of the Suit i.e. Civil Suit No.192/2019 before Court of Small Causes, he would submit that in the absence of landlord tenant relationship, the Suit could not be filed under the provisions of Section 16 of the Maharashtra Rent Control Act. He has pointed out the affidavit in reply to the Application filed by Respondent-Plaintiff wherein it is asserted that the Suit is filed under section 16 of said Act. Placing reliance on the assertion of the Respondent-Plaintiff, he would urge that the plaint is barred as Small Causes Court would not have the jurisdiction to entertain the proceedings. As regards the issue of the Court fees, he points out the findings of trial Court as regards the applicability of Section 6(xii) of Bombay Court Fees Act 1959. Pointing out the relevant Section 6(xii) of Court Fees Act, 1959, he would submit that section would be applicable to a Suit between the landlord and tenant and considering the facts of the present case whether Respondent-Plaintiff is seeking recovery of an amount being double the monthly license fees which is in the nature of damages, the court fees will have to be paid accordingly.

4. *Per contra*, learned counsel appearing for Respondent-Plaintiff submits that for the purpose of Order 7 Rule 11 of CPC,

what is required to be looked into is plaint. He has taken this Court to the pleadings in the plaint and would submit that the Suit has been filed for recovery of the possession of the licensed premises from the Applicant, the license to remain in occupation has since come to be determined. He would submit that as per the provisions of Section 26 of Small Causes Court Act, the jurisdiction with the Small Causes Court, Pune is not barred by any law. As regards Court fees, according to him provisions of section 6(xii) of Bombay Court Fees Act, 1959 will apply as there is no other provision regarding payment of the court fees in case of a Suit filed by licensor for recovery of the license fees.

5. Considered the submissions and perused the record.

6. The settled position is that for adjudication of the Application under Order 7 Rule 11 of CPC, it is only the plaint which is required to be looked into.

7. Civil Suit No.192/2019 has been filed by the Respondent-Plaintiff seeking recovery of the possession of the suit premises and for certain ancillary reliefs regarding clearing of the outstanding dues and payment of double of the monthly license fees to the Plaintiff from 1/3/2019 till handing over the actual

possession of the premises.

8. It is pleaded in the plaint that registered leave and license agreement was duly executed between the Plaintiffs and Defendant, pursuant to which the Applicant was put in possession of the licensed premises on the agreed license fees. It is further pleaded that from May 2019, the Applicant has not paid any amount to the Plaintiff towards license fees/compensation/damages and as per the agreement, amount of Rs.3,60,597.59/- is due and payable for the period from 1/1/2019 to 31/12/2019. It is further pleaded that by notice dated 27/2/2019 leave and license agreement was terminated.

9. Based on these pleadings the Suit has been filed seeking recovery of possession of the premises and relief of payment of double the monthly license fees payable to the Plaintiffs from 1/3/2019.

10. Although the Plaintiff has mentioned that the Suit has been filed under section 16 of the Maharashtra Rent Control Act, what is required to be looked into are the pleadings in the plaint to ascertain the nature of the proceedings. In the present case, if the plaint is read in its entirety, which is the mandate of Order 7 Rule

11 of CPC, there is no reference as regards the landlord and tenant relationship between the Plaintiff and the Defendant. On the other hand, what can be inferred is that the relationship of licensor-licensee existed between the parties pursuant to duly registered leave and license agreement which came to be terminated and subsequent thereto, the Plaintiff is seeking recovery of the licensed premises.

11. In this context, the provisions of Section 26 of the Provincial Small Causes Courts Act, 1887 is relevant which reads thus:

“26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating

to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply.”

12. In view of Section 26 of the Provincial Small Causes Courts Act, 1887, the Suit has been rightly instituted before the Court of Small Causes and as such cannot be said to be barred by law.

13. Next issue which arises for consideration is as regards the payment of court fees. The Plaintiff is seeking an amount which is double the monthly license fees payable to the Plaintiff from 1/3/2019 till handing over the actual possession of the suit premises, apart from the relief of seeking recovery of the possession of the premises. The trial Court has considered the provisions of Section 6(xii) of the Court Fees Act as the applicable provision for computation of the court fees. Perusal of the said provision would indicate that the same would be applicable in case of Suit which has been filed between the landlord and tenant for delivery of the premises by the tenant or recovery of immovable property from tenant after determination of tenancy. Even if it is accepted that the said provision is applicable to the case of licensor and licensee relationship, the same would cover only the first relief of recovery of the possession which has been sought in the present case. Apart from the said relief, what the Plaintiff is also seeking is recovery of double the amount of the monthly license fees to the Plaintiff from 1/3/2019 till handing over the possession. The amount to be recovered as on the date of filing of the suit will have to be crystallized and *ad-valorem* court fees will have to be paid thereon

according to the amount claimed.

14. Having regard to the discussion above, the Plaintiff is directed to amend the plaint within a period of one week from the date of uploading of this order on the website crystallizing the amount of license fees which is due and payable as on the date of filing of the proceedings and to pay court fees *ad-valorem* thereon as per the amount claimed.

15. Civil Revision Application is disposed of in the above terms.

SHARMILA U. DESHMUKH, J.