

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

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WRIT PETITION NO. 7237 OF 2022

Mr. Ganpat Govind Shigvan)
an adult Indian Inhabitant of Mumbai)
Occupation Unemployed, Age 68 years)
Residing at Premises No.7, Ground Floor,)
Ajanta Building, L.D. Ruparel Marg,)
Malabar Hill, Mumbai - 400 006).....Petitioner

Versus

Mrs. Preeti Paresh Shah,)
an adult Indian Inhabitant of Mumbai)
Occupation Business, Age 52 years)
Residing at Flat No.7, 4th Floor,)
Ajanta Building, L.D. Ruparel Marg,)
Malabar Hill, Mumbai- 400 006)....Respondent

Dr. Abhinav Chandrachud a/w. Mr. Saurish Shetye i/b. Mr. Akhlaque Solkar a/w. Mr. Rohan Deshmukh, Advocates for the Petitioner.

Mr. Rajeev Kumar, Senior Advocate a/w. Mr. Piyush Shah a/w. Mr. Dishang Shah a/w. Mr. Chirag Unadkat a/w. Mr. Hetta Sagar, Advocates for the respondent.

CORAM : SANDEEP K. SHINDE, J.

RESERVED ON MONDAY, 2ND JANUARY, 2023.

PRONOUNCED ON 13TH JANUARY, 2023

J U D G M E N T

1. Miss Preeti P. Shah, the Respondent and her mother Jaylaxmi Amrutlal Mehta, instituted Suit No.2151 of 2010 against the Petitioner-Defendant, for possession of Garage No.7 admeasuring 140 sq.ft., Ground Floor, New Ajanta Co-operative Housing Society Ltd., situated at L.D. Ruparel Marg, Malabar Hill, Mumbai - 400 006 ("suit property-garage" for short). Pending suit, Petitioner-Defendant, taken out Notice of Motion under Order 7 Rule

10 of the CPC for return of plaint with alternative prayer under the provisions of Order 7 Rule 11 of the CPC for rejection of the plaint. Later, prayer seeking rejection of the plaint was not pressed. The Learned Trial Court vide order dated 4th February, 2021 declined to return the plaint and dismissed the Notice of Motion No. 3475/17. Feeling aggrieved by the said order, this Petition is preferred.

2. Facts essential for the decision of this Petition, are as under.

3. Mr. Amrutlal Mehta - father of the Respondent acquired right, title and interest in the suit property-garage. Mr. Amrutlal Mehta, hired Petitioner-Defendant, as a domestic servant for household work in or about 1969. It is stated that initially the Defendant used to sleep outside the flat No.7 in the lobby. Thereafter, the Defendant took training of driving motor vehicle and obtained driving licence in 1973. He got married in or about 1979, but continued to work with Amrutlal Mehta (now deceased).

He allowed the Defendant and his family to shift in the garage in the year 1985-86. Plaintiffs' case is that, Defendant had assured Amrutlal, once he acquires suitable residential accommodation, he would shift from the garage premises. That, since 1986, Defendant was employed as a driver in M/s. Amrutlal Zinabhai Steel Pvt. Ltd., a Company, of which Mr. Amrutlal Mehta was one of the directors. The Petitioner's services as a driver was continued even after the death of Mr. Amrutlal Mehta, who passed away on 9th May, 2005. Thereafter, as per last will and testament of deceased Amrutlal, all movable and immovable properties have been bequeathed to Plaintiff No.2 and accordingly probate was obtained. It is Plaintiffs' case that Amrutlal Mehta ('deceased' for short) had never appointed Petitioner, as a driver after 1986, but he continued his employment with M/s. Amrutlal Zinabhai Steel Pvt. Ltd. It appears, the Company did not require services of the Defendant as a driver. He was retrenched in or around May, 2006. Whereafter, Petitioner-Defendant, filed a complaint (ULP No. 251/2006) seeking reinstatement on

the post of driver in M/s. Amrutlal Zinabhai Steel Pvt. Ltd. with full back-wages and continuity of services with effect from July, 2006. The Learned Presiding Officer, Labour Court, vide Judgment and Order dated 24th May, 2010 dismissed the complaint, but directed M/s.Amrutlal Zinabhai Steel Pvt. Ltd. Company, (Respondent No.2 therein) to deposit retrenchment compensation within one month from the date of passing of the order. Learned Presiding Officer upon appreciating the evidence, was pleased to observe in judgment that "the Complainant (Petitioner) was working as a driver for one of the directors of the Respondent Company i.e. the chairman late Shri Amrutlal Mehta till his death. He was allowed to use one garage for his residential purpose, at that time as concession and free of cost. After death of Amrutlal Mehta, the company was not in need of any driver. He was properly retrenched and offered him his legal dues". Yet before filing the ULP Complaint, Petitioner instituted, Declaratory Suit in the Court of Small Causes, Mumbai being Suit No. 162/2009, to seek declaration that, he is a

tenant in the suit premises. The suit was dismissed by Judgment and Order dated 16th August, 2019, wherein it was, held that the Petitioner (Plaintiff therein) failed to prove that he had acquired any right, title or interest in the suit premises as tenant under the provisions of the Maharashtra Rent Control Act or a licensee or gratuitous licensee under Section 41 of the Presidency Small Causes Court Act. The Appeal against the said Judgment and Decree, is pending for consideration before the Bench of Small Causes Court at Bombay.

4. Be that as it may, in the interregnum, the Plaintiffs instituted the Special Suit on 14th July, 2010, to recover possession of the suit Garage on the ground that no rights of, whatsoever nature either as a tenant or licensee or gratuitous licensee were created in favour of the Petitioner and that the Plaintiff being lawful owner of the suit garage and Petitioner-Defendant, being a trespasser, Defendant be ordered to hand over vacant and

peaceful possession of the suit garage No.7, New Ajanta Co-operative Housing Society Ltd. Mumbai - 400 006.

5. Pending Suit, vide order dated 25th November, 2010, passed in Notice of Motion No. 2201/10, this Court had observed, thus;

"Having found prima facie that the defendant has no title to the property, I am of the opinion that he cannot be allowed to continue save and except as an agent of the Court Receiver and on such terms and conditions as, determined by the Court Receiver. However, Receiver will not dispossess the defendant, but appoint him, as an agent on such terms and conditions as may be determined by him."

6. In any case, upon appreciating the pleadings, the Trial Court framed the following issues on, 3rd December, 2010:

(i) Whether Plaintiffs prove their lawful title over the suit premises ?

- (ii) Whether Plaintiffs prove that Defendant is in illegal possession of the suit premises?
- (iii) Whether this Court has jurisdiction to try and entertain the present suit?

7. Pending suit, defendant moved a motion objecting to jurisdiction of the Court on the ground that , since Plaintiffs were claiming recovery of possession of the suit premises from the Defendant as gratuitous licensee, the City Civil Court has no jurisdiction to entertain and try the suit in view of Section 41 of the Presidency Small Cause Court Act, 1882. The reliance was placed on a decision in the case of ***Central Warehousing Corporation, Mumbai Vs. Fortpoint Automotive Pvt. Ltd., Mumbai [2010(1)Mh.L.J.658]***; wherein it was held that "Small Causes Court has exclusive jurisdiction to entertain and try all suits and proceedings between the licensor and licensee or a landlord and tenant, relating to recovery of possession of any immovable property situated in Greater Mumbai. Much emphasis laid on non-obstante

clause in Section 41(1) of the Act of 1882. For that reason the Petitioner would contend that he being gratuitous licensee and Respondent being licensor, the plaint was required to be returned for its presentation to the Court of competent jurisdiction.

8. The learned Trial Court, upon perusing the pleadings in the plaint, held, since the plaintiffs suit for possession was on title and defendants possession was that of tress-passer, Civil Court has jurisdiction to entertain the suit. Resultantly, refused to return the plaint, as sought by the defendant-petitioner.

9. Dr. Chandrachud, learned counsel appearing for the Petitioner would rely on pleadings in paragraphs 6 and 26 of the plaint, to contend that, pleadings therein clearly convey that the Defendant was allowed by Mr. Amrutlal Mehta, to occupy the suit garage in the year 1985-1986 as a gratuitous licensee. Dr. Chandrachud would strenuously argue that reading of the plaint as a whole, undoubtedly,

shows that Mr. Amrutlal Mehta being managing director for the company, inducted the Petitioner as a gratuitous licensee in the suit premises and, therefore, under Section 41 of The Presidency Small Causes Court Act, the Small Causes Court, Bombay has exclusive jurisdiction to decide proceeding between licensor and licensee, relating to recovery of possession of immovable property. In support, Dr. Chandrachud, learned counsel, relied, on the judgment of the Apex Court in the case of ***Prabhudas damodar Kotecha and Ors. Vs. Manhabala Jeram Damodar and Anr. [(2013) 15 Supreme Court Cases 358]*** to contend that Expression "Licensee" under Section 41(1) of the PSCC Act includes 'gratuitous licensee', as well. Dr. Chandrachud would rely on paragraph Nos. 54, 56 and 59 of the cited decision, to contend that the expression "licence" as reflected in the definition of "licensee" under sub-section (4-A) of Section 5 of the Rent Act and Section 52 of the Easements Act are *not pari materia*". He would further contend that the expression "licensee" used in 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. The contention of Dr. Chandrachud that, the Petitioner-Defendant being a gratuitous licensee, the Trial Court ought to have returned the plaint for its presentation to the Court of proper jurisdiction, cannot be accepted; because, the meaningful reading of the plaint and annexures appended thereto in whole, indicate and convey that the Defendant was accommodated in the garage, till he continues to be in service of M/s. Amrutlal Zinabai Steel Pvt. Ltd. as a driver. The interpretation sought to be placed by the Plaintiff, on the pleadings in paragraphs 6 and 26, alone cannot be construed to mean that Petitioner was inducted as a gratuitous licensee in the suit garage and that too, by ignoring other pleadings and documents annexed to the plaint. In fact, it is nothing but 'selective approach' of the Petitioner to protract the suit proceedings. Rather narrative in the plain paragraph No.6 to the effect that;

"the said deceased (Amrutlal Mehta) being kind hearted person allowed the Defendant and his family to temporary shift in the suit premises in or about in the year 1985-86", by itself would not mean to interpret that Petitioner was inducted as a gratuitous licensee. Reason being, in the Rent Declaratory Suit, filed by the tenant, Rent Court categorically held that Petitioner was neither tenant, nor licensee or gratuitous licensee in suit premises. As a matter of fact, Petitioner is suggesting to ignore the findings of the Rent Court, vis-a-vis his character of possession, in the suit premises and afford him, to chance defend the suit, in the Small Causes Court. This approach cannot be appreciated, but, to be rejected. That, even, assuming, the plaint in the suit, is returned and eventually presented in the Small Causes Court, even then issue therein, as to Defendant's character of possession, in the suit garage cannot be answered, reason being, the said issue has been answered in the suit filed by the Petitioner - Defendant. Even otherwise, the Learned Trial Court while rejecting the Petitioner's contention has correctly held

"when an objection to jurisdiction was raised by way of demurrer and not at the trial, the objection must proceed on the basis of that the facts as pleaded by the initiator of the impugned proceedings are true and submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law". Herein, the suit proceeds on the foundation that Plaintiff being the rightful owner of the suit premises and Defendant's character of possession being that of trespasser. Therefore, the trial court correctly read the plaint to be correct.

10. Dr. Chandrachud would also rely on the judgment in the case of ***Mansukhlal Dhanraj Jain and Ors. vs. Eknath Vithal Ogale [(1995) 2 Supreme Court Cases 665]***. In the said decision it was held that once the Plaintiff contends that he is a licensee of the suit premises and Defendant is a licensor and on that basis he wants the assistance of the court to protect his possession, it would be a suit between the licensee and the licensor "relating to

the recovery of possession". Thus, in Mansukhlal (supra.), the Hon'ble Supreme Court has explained the difference between the words "relating to recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". Accordingly held that, suits for, protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1) of the Act. In my view, the decision in the Mansukhlal Dhanraj Jain (supra.) has no application to the facts of the case. The next decision relied on by Dr. Chandrachud, was in the case of **G.K. Talwar Vs. M/s. Rallis India Ltd. [1993 Mh. L.J., 347]**. In the said decision, it was found that there existed revocable license between the company and the petitioner, (employee of the Company) for consideration and on termination of license, the officer has defaulted his obligation to restore possession. The evidence therein clearly would show that

company conferred on the employee officer a license which was of a temporary duration and which was revoked at will and which did not create any rights whatsoever on the officer as far as premises were concerned. In the backdrop of these facts, it was held that, company, was not justified in styling the officer as trespasser in the plaint, as the officer refused to restore the premises after termination of license. In my view, the facts in the case at hand are completely different than the facts in the case of G.K. Talwar (supra.). Herein the Petitioner was not in employment of Late Amrutlal Mehta. In fact, Mr. Amrutlal Mehta was a managing director of the company and the Petitioner was working as a driver in the said company. That during his employment, the Petitioner-Defendant was allegedly permitted to occupy the garage, owned by Mr. Mehta. Therefore, Petitioner's possession therein, was not in consideration of any services allegedly rendered by him to late Mr. Amrutlal Mehta. This fact is apparent from the judgment of the Labour Court which conveys that the Petitioner was retrenched by the

company in the year 1985-86 and therefore his possession in the suit premises was not arising from the employment contract between Mr. Amrutlal Mehta and the Petitioner. The next judgment relied on by Dr. Chandrachud was a decision in the case of ***Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (Dead) through Lrs. [(2012) 5 Supreme Court Cases 370]***. The principles laid down in the cited judgment are as under:

"97. Principles of law which emerge in this case are crystallized as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. the caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some

time either as a friend, relative, caretaker or as a servant".

11. In my view, neither of the judgments cited by Petitioner-Defendant, support to his case for the simple reason that, the holistic reading of the plaint conveys that the Plaintiffs were, seeking decree of possession on title thereto, and the Defendant was/is holding it as 'trespasser'.

10. In consideration of the facts of the case and for the reasons stated above, in my view, trial court has not committed error in exercise of the jurisdiction and, therefore, no interference is called for in the impugned order. In the result, Petition is dismissed.

(SANDEEP K. SHINDE, J.)