

Dusane

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

WRIT PETITION NO.7344 OF 2023

Ravi Laju Chanrai

...Petitioner

V/s.

Gaurang Rameshchandra Kinkabwala ...Respondent

Ms. Reshma Ravi a/w Ms. Supriya Gurav i/by K.P.
Ravi for Petitioner.

Mr. Girish S. Godbole, Senior Counsel a/w Mr.
Mehul A. Shah for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATE: 28th July 2023

P.C.:

1. Heard Ms. Reshma Ravi, learned Counsel appearing for the Petitioner and Mr. Girish Godbole, learned Senior Counsel appearing for the Respondent.

2. By the present Writ Petition, the Petitioner-original Defendant is challenging the legality and validity of the order dated 20th April 2022 passed by the learned Judge, Court of Small Causes at Mumbai below Exhibit 9 in R.A.E. Suit No. 546 of 2018. By the said order, application filed by the Respondents i.e. Plaintiffs directing the Petitioners to allow the Plaintiffs'

Architect to visit and inspect the suit premises and to record measurements and photographs and to make a report regarding the condition and position of the suit premises has been allowed.

3. The Petitioner challenged the legality and validity of the said order by filing Civil Revision Application No.159 of 2022 before the Division Bench of the learned Court of Small Causes, Mumbai and the said application was dismissed on the ground that as the substantive rights of the Defendants are not affected by the order dated 20th April 2022 passed by the learned Judge of Court of Small Causes at Mumbai, the said order is not revisable and therefore, the revision was dismissed.

4. Ms. Reshma Ravi, learned Counsel appearing for the Petitioner submitted that the suit itself is not maintainable under the provisions of Section 33 of the Maharashtra Rent Control Act, 1999 (for short "Rent Act") as on perusal of the plaint, it clearly shows that the suit filed is not between the landlord and tenant. She submitted that as the suit itself is not maintainable, the learned Judge has no jurisdiction to pass the order appointing the Court Commissioner. To substantiate the said contention, learned Counsel appearing for the Petitioner has relied on the decision of the Supreme Court in the case of **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad & Ors.**¹ She pointed out

¹ (2007) 2 SCC 355

paragraph 23 of the said judgment where paragraph 30 of the decision of the Supreme Court in the case of **Harshad Chiman Lal Modi V. DLF Universal Ltd**². (SCC pp. 803-04, para 30) was quoted. It has been held by the Supreme Court that "Where a Court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a Court having no jurisdiction is a nullity". As far as said proposition is concerned, there cannot be any other view. However, in the present case, the admitted position is that one Mrs. Kamla Chanrai, was the original tenant of the suit premises who passed away on 19th December 1992. It is the contention of the Plaintiffs that thereafter wife of Defendant No. 1 i.e. Asha got documents prepared in her name to show that she was residing in the suit premises alongwith her mother-in-law Kamla. Said Asha had filed suit for declaration of tenancy wherein the present Defendants have made a statement that they have relinquished their rights in favour of said Asha. The Petitioner No.1 i.e. Defendant No.1 is the husband of said Asha and Defendant No. 2 i.e. Petitioner No.2 is the son of said Asha. In this background, the Plaintiffs have raised following contention in paragraph 6 of the plaint:

² (2005) 7 SCC 791

"6. The Plaintiffs state that Asha Chanrai expired on 03.04.2014. At that point of time also, none of the Defendants or their heirs were residing in the suit premises. Since her death, the suit premises are lying locked and the Defendants are not residing therein. The Plaintiffs pass by the suit premises every day and have not seen any one residing therein or using the suit premises. Defendant Nos. 1 and 2 herein are husband and son respectively of said Asha and thus being in-law, her legal representatives and are accordingly joined as party Defendants to the suit as inter-meddling with her estate. The Plaintiffs submit that the said Asha has died without leaving any heirs as qualified. In any event, the Defendants have specifically given up, waived and surrendered their rights and claims to tenancy and are now estopped from making any claim in this regard but are required to return and hand over the quiet, vacant and peaceful possession of the suit premises to the Plaintiffs and the tenancy has come to an end. **In the alternative and without prejudice and in the event of any finding that the Defendants have any valid claim of succession to tenancy, they are still liable to be evicted upon the ground on non user as set out herein.**"

(Emphasis added)

5. On the basis of said contention raised in the plaint, it is the contention of the learned Counsel appearing for the Petitioner that this is not the suit between the landlord and tenant, as specific contentions are raised to the effect that the Defendant Nos. 1 and 2 are not the tenants. However, it is specifically stated in earlier part of the plaint in paragraph 3 that said Mrs. Kamla Chanrai was the original tenant and in fact that is the admitted position. In paragraph 5 of the plaint, it is stated that

Mrs. Asha Chanrai i.e. daughter-in-law of Mrs. Kamla Chanrai filed R.A.E. Suit No. 2007 of 1994 and she has been declared as a tenant.

6. The Defendant No.1 is the ex-husband of Mrs. Asha Chanrai and Defendant No. 2 is son of said Mrs. Asha Chanrai. In this background of the matter, it is clear that although it is tried to be contended that the Defendant Nos. 1 and 2 are not the legal representatives, but thereafter it is stated that without prejudice to the said contentions if it is found that the Defendants have any valid claim of succession to tenancy, then they are still liable to be evicted upon the ground of non user as contemplated under Section 16(1)(n) of the Rent Act. In paragraph 10, the contention is raised that the Defendant No. 2 is carrying out major work of illegal alterations and additions of permanent and/or structural nature in or to the suit premises. Thus, it appears that the suit has been filed for eviction on the ground of Section 16(1)(a), 16(1)(b) and 16(1)(n) of the Rent Act. Thus, there is no substance in the contention that the suit is not maintainable and therefore the learned Judge of Court of Small Causes, Mumbai has no jurisdiction.

7. It is the further submission of the learned Counsel appearing for the Petitioner that there is a suit already filed by the Petitioner No.2 in City Civil Court, Bombay regarding Section

351 notice issued under the provisions of MCGM Act, 1988 and in that suit also a Notice of Motion has been filed by the Respondents seeking same relief of appointment of the Court Commissioner. However, that cannot be a ground for setting aside the impugned order by which the Court Commissioner has been appointed.

8. In the plaint, in paragraph 11, it is stated that the notice was given for inspection by the Plaintiff No.1 and inspite of that inspection was not granted. Section 28 of the Rent Act provides that the landlord shall be entitled to inspect the premises let or given on license, at a reasonable time after giving prior notice to the tenant, licensee or occupier. A bare perusal of the plaint filed in the Court of Small Causes clearly shows that the dispute is between the landlord and tenant and it cannot be said that the Court of Small Causes has no jurisdiction to deal with the said suit. Therefore, there is no substance in the contention raised by the learned Counsel appearing for the Petitioner.

9. It is the contention of learned Counsel appearing for the Petitioner that in fact the inspection was offered to the landlord before the landlord sent notice for inspection. However, it is an admitted position that till today, no inspection has been given to the landlord. In fact, the learned Counsel appearing for the Petitioner, at this stage, also states that she is not in a position

to make the statement that the inspection will be given. Therefore, there is no substance in the said contention.

10. As far as the contention that the revisional Court should have entertained the revision, it is to be noted that by the impugned order of the learned Trial Court, the Commissioner has been appointed to inspect the suit premises. In fact, Section 28 of the Rent Act gives right to the landlord to inspect the premises let or given on license, at a reasonable time after giving prior notice. The Petitioner will have right to object to the Commissioner's report. Therefore, the learned Revisional Court is right in observing that by the said order of appointment of the Commissioner, substantive rights of the Defendants are not affected. The learned Revisional Court has relied on the decision of a Full Bench of this Court in the matter of **Bharatiben Shah & Anr. Vs. Gracy Thomas & Anr.**³ There is no irregularity or illegality in said finding of the learned Revisional Court.

11. Accordingly, there is no substance in any of the contentions raised by the Petitioner. The Writ Petition is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)

BHALCHANDRA
GOPAL DUSANE

³ 2013 (2) Bom. C.R. 1

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