

premises being Flat No.14, First floor, Mayur Pankh, Khokhani Lane, Ghatkopar (East), Mumbai 400 077 (the “said/suit premises”). The defendants/landlords, the Respondent had filed written statement thereafter and the issues were framed on 11th February, 2019. Amendments were carried out to the plaint and the defendants had also filed their additional written statement. Thereafter, additional issues were framed on 6th November, 2020. The issues framed on 11th February, 2019 and on 6th November, 2020 are set out as under:

“Issues framed on 11.02.2019

1. Whether the plaintiff proves that Defendant No.1 is the owner and Nirmalaben J. Mehta was the tenant in respect of the suit premises ?
2. Whether the Plaintiff proves that defendant No.2 and 3 are the unlawful occupants of the suit premises ?
3. Whether the Plaintiff is entitled for declaration as prayed ?
4. Whether the Plaintiff is entitled for possession of the suit premises as prayed ?
5. What order and decree ?

Additional issues framed on 06.11.2020

1. Whether the Plaintiff is entitled for the relief for mandatory injunction as prayed?
2. Whether the Plaintiff is entitled for the relief of

perpetual injunction as prayed?”

4. In the application below Exhibit 66 the Petitioner sought recasting of the issues as under :-

“Issues Proposed

1. Whether the Plaintiff proves that Nirmalaben was the monthly tenant to the Defendant No.1 in respect of the suit premises?
2. Whether the Plaintiff proves that he is entitled to tenancy rights in respect of the suit premises?
3. Whether the Plaintiff proves that the Defendant No.1 has unlawfully put the Defendant Nos.2 and 3 in possession of the suit premises?
4. Whether the Defendant No.1 proves that Mayur Pankh building is declared as dilapidated in accordance with the provisions of Section 354 of the Bombay Municipal Corporation Act, 1888 ?
5. Whether the building was demolished by the Defendant No.1, pursuant to the notice under Section 354 of the Bombay Municipal Corporation Act ?
6. Whether the Defendants prove that the Plaintiff has no right in the suit premises due to demolition of the Mayur Pankh building ?
7. Whether the Plaintiff is entitled to the possession of the suit premises ?
8. Whether the Defendant No.1 is liable to commence the construction of the building within 1 year from the date of demolition of the said dilapidated Mayur Pankh building ?

9. Whether the Defendants are liable to complete the construction, within 3 years from the date of demolition of the building ?

10. Whether the Defendant No.1 is liable to handover possession of the newly constructed premises in the new construction to the Plaintiff, and allot area equivalent to the then existing suit premises, in the newly constructed building ?

11. Whether the Defendants prove that this Honourable Court has no jurisdiction to try and entertain the suit ?

12. Whether the defendant No.1 proves that the Defendants No.2 and 3 are lawful tenants ?

13. What order ?”

5. In the Trial Court the application for recasting of issues was objected to by the Respondents herein on the ground that the same was only to delay the proceedings and that the issues framed earlier based on the pleadings and were correctly framed and therefore, the application by the Petitioner was liable to be rejected.

6. The Trial Court after hearing both the parties has observed that issues have been framed on 11th February, 2019 and additional issues have been framed on 6th November, 2020 and in all six issues have been framed

and the Petitioner was seeking to recast these issues by proposing thirteen issues. The Trial Court has observed that under Order XIV Rule 1 of the Civil Procedure Code, 1908 (the "CPC") issues have to be framed on the basis of material proposition of fact and law which is affirmed by one party and denied by the other and not every denial would become an issue. That necessary issues have already been framed for deciding the matter in controversy. That the list of issues is not material for deciding the matter on merit and it would not be necessary to recast. The Trial Court has also observed that the suit has been filed for declaration of Petitioner as tenant in respect of the said premises and for mandatory injunction as well as perpetual injunction. Paragraphs No.4 to 6 of the said order are quoted as under :-

"4. The suit filed in the year 2010. Already the period of 12 years has been lapsed. The suit is filed for declaration regarding alternative accommodation in the building which will be constructed by the defendant. The suit is for mandatory injunction for giving directions to the defendant to provide alternative accommodation of the equivalent size in view of the suit premises in the new building. There is also prayer of permanent injunction by giving directions to the defendant to reserve flat in lieu of the suit premises. There is also prayer for declaring the plaintiff as a tenant in respect of the suit premises and defendant Nos. 2 and 3 have no right in respect of the suit premises. There is also prayer of permanent injunction for not creating third party interest in the suit premises.

5. The objection regarding jurisdiction of this court has been rejected by the Predecessor by passing order on Exh.29 on 17.08.2013. Therefore, this Court has jurisdiction to entertain the suit. Hence, the issue of jurisdiction is not necessary.

6. Issues are framed below Exh. 52. Additional issues are framed on 06.11.2020. There are total six issues. The plaintiff has given list of total 13 proposed issues. I think that in view of Order 14 Rule 1 of Civil Procedure Code, issues have to be framed on the basis of material proposition of fact and law which is affirmed by one party and denied by the other. Material propositions are those propositions of fact or law which plaintiff must alleged in order to show right to sue or defendant Must alleged in order to constitute his defence. Therefore, I think that each and every fact which has been denied by the defendant does not become issue. In the present matter, already my Predecessor has framed all necessary issues which are sufficient for deciding the matter in controversy. Negative issues cannot be framed. The list of issues is not material for deciding the matter on merit. Therefore, there is no any merit in the application. I proceed to pass following order.

ORDER

The application vide Exh.66 is hereby rejected.

7. Holding as above, the Trial Court rejected the application of the Petitioner to recast the issues.

8. I have heard Mr.Joshi, learned counsel for the Petitioner and Mr.Ankit Rajput, learned counsel for the Respondents and with their able assistance I have perused the papers and proceedings and considered the

rival contentions.

9. The principal prayers a(1), a-2 and a-3 in the said suit are usefully quoted as under:-

a(1). This Honourable Court be pleased to declare the Plaintiff is the tenant in respect of the suit premises i.e. flat No.14, flat No.14, comprising of 1 Bedroom Hall Kitchen, situated on the first floor of Mayur Pankh Building, Khokhani Lane, Ghatkopar (East), Mumbai- 400 077.

(a-2). This Honourable Court be pleased to pass Mandatory orders directing the Defendants to make provision for permanent alternate accommodation of equivalent size in lieu of the suit premises in the proposed building to be constructed and further direction to hand over the same to the Plaintiff forthwith upon its completion.

(a-3). The Defendants be restrained by an order and Permanent injunction of this Honourable Court from dealing with disposing off alienating or creating their party rights in respect of the suit building, as mentioned in prayer (a) here above, without complying with the statutory liability of providing alternate accommodation to the Plaintiff.

10. Mr.Joshi has kindly tendered before this court the table containing the issues framed earlier and the issues proposed. A perusal of the same clearly suggests that it is not necessary to reframe / recast the six issues already framed on 11th February, 2019 and on 6th November, 2020 which cover the three principal prayers quoted above. The other prayers are

consequential or interim. The main prayer as can be seen from the Plaint is to declare that Petitioner is the tenant in respect of suit premises and the suit is filed in the Small Causes Court for such declaration as R.A.D. Suit. Order XIV Rule 1 of the Code of Civil Procedure 1908 ("CPC") clearly provides that issues have to be framed on the basis of material propositions of fact and law which is affirmed by one party and denied by other. The first proposed issue is already there as issue No.1 framed on 11th February 2019. Proposed issue No.2 is covered by issue No.3 framed on 11th February 2019. Proposed issues No.3 and 12 are covered by issue No.2 framed on 11th February 2019. Proposed issues No.4, 5, 6, 8, 9 and 10 are not germane to the material controversy and do not in my view constitute material propositions affirmed by one party and denied by the other. Even otherwise framing these issues may also change the nature of the suit for which the Small Causes Court may not have jurisdiction. Proposed Issue No.7 is already issue No.4 of the issues framed on 11th February 2019. With respect to the proposed issue of jurisdiction at item 11, paragraph No.5 of the impugned order clearly takes care of the same as the Court has held that the Small Causes Court has jurisdiction to entertain the suit and therefore, even that proposal is not in issue. I am therefore in agreement with the views of the Tribunal that not every fact

in the plaint that is denied becomes an issue to be framed.

11. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined. The real dispute between the parties is determined, the area of conflict is narrowed. The correct decision of civil litigation largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the CPC dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by other. The issues are to be framed and recorded on which the decision of the case shall depend. The Court is to exert itself so as to frame sufficiently expressive issues which in my view the Trial Court has done. The Trial Court has therefore correctly exercised its jurisdiction by rejecting the application for recasting the issues below Exhibit-66.

12. I therefore do not find any error or illegality or perversity in the order dated 19th August, 2022 passed by the Small Causes Court below Exhibit 66 in the said R.A.D. Suit No.804 of 2010. The order does not call for any interference.

13. The Petition accordingly deserves to be dismissed and it is hereby dismissed. Parties to bear their own costs. Let the Trial of the said suit proceed as per schedule.

(ABHAY AHUJA, J.)