

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1605 of 2019

**Smt. Krishna Guha
Vs.
Sri Shurid Dey & Ors.**

For the petitioner : Mr. Kasinath De
Mr. Sandip De
Mr. Amit Chowdhury

Heard on : 03.01.2024

Judgment on : 10.01.2024

Ajoy Kumar Mukherjee, J.

1. Petitioner herein preferred this application under article 227 of the Constitution of India challenging order no. 13 dated 19.03.2019 passed by the learned Judge, 2nd Bench, Presidency Small Cause Court (in short PSC Court) at Calcutta in Ejectment Suit No. 190 of 2018. The opposite parties being the landlords instituted aforesaid suit for eviction of the defendant /petitioner from the suit premises. The petitioner herein as defendant /tenant appeared in the said suit after receipt of summon and filed an application under order VII Rule 10 of the Code of Civil Procedure (CPC) for return of the plaint.

2. In the said application, petitioner contended that the PSC Court has no inherent jurisdiction to try the said ejectment suit for the following reasons:-

- (i)** Section 6 of the West Bengal Premises Tenancy Act 1997(Act of 1997) clearly stipulates that the “*Civil Judge having jurisdiction*” is only competent to try suit for eviction brought under the Act.
- (ii)** The PSC Court is to exercise jurisdiction within the local limits of the ordinary original jurisdiction of the High Court under section 17 and the inherent jurisdiction of the said PSC Court have been created under section 18 read with section 19 of the Presidency Small Cause Court Act, 1882 (in short PSCC Act, 1882). Under Clause (d) and clause (g) of section 19 of the said Act “*suits for recovery of immovable property*” and “suits for the determination of any other right to or interest in immovable property” have been specifically excluded amongst others. The procedure to be followed by the PSC Court are guided by the Rules of practice of the court of small cause court at Calcutta and by the Small Cause Court manual. The Code of Civil Procedure is not at all applicable in view of bar under section 8 of the Code of Civil Procedure and as such section 9 of CPC is not available to the PSC Court and excepting the matters enumerated in section 18 read with section 19 of the PSCC Act 1882, the PSC Court cannot try any matter beyond those mentioned in the sections as court of original jurisdiction.
- (iii)** The entire body of the West Bengal Premises Tenancy Act 1997 specially section 6,7,9, 43A of the Act refers to the court of “*Civil*

Judge” but the word “*Civil Judge*” has not been defined in the said Act, which term has only been stated in The Bengal, Agra and Assam Civil courts Act 1887. The said Act of 1887 applies to the entire state of West Bengal excepting the territorial limits of the Ordinary Original Jurisdiction of the High Court at Calcutta. So subject to the pecuniary jurisdiction and other restrictions as to the subject matter as per distribution of the High Court, the original side of the Hon’ble High Court, and the City Civil Court are the original Court of Civil Jurisdiction for the jurisdiction covered by the ordinary Original Jurisdiction of the City of Calcutta.

- (iv)** By virtue of section 12A read with schedule IV of the West Bengal Premises Tenancy Act 1997, the PSC Courts were sought to be empowered to try the Ejectment suits by a landlord against a tenant as court of first instance having pecuniary limits upto Rs.60,000/-, apparently making the provision applicable in the case of the West Bengal Premises Tenancy Act, 1997. But while incorporating section 12A in the Act of 1997 the legislature has not excluded anything contained anywhere in this Act of 1882 and as a result the PSC Court have not been made “*civil Judges*” within the meaning of the said Act of 1997 nor the words “*civil Judge*” appearing in the different provisions of the said Act of 1997 have been made inapplicable in the case of the matters covered by section 12A read with schedule IV of the said Act of 1997 and as such the PSC Court has no jurisdiction to entertain the suit for recovery of possession having no jurisdiction to try the same.

- (v) For the purpose of exercising jurisdiction in the ejectment suit under the provisions of the Act of 1956, the provisions of section 18 of the PSCC Act 1882 was amended in the year 1999 and the jurisdiction of the PSC Court was created for trying all suits and proceedings for eviction of a tenant under the Act of 1956 and the court was treated “as a civil court of ordinary original jurisdiction” by making the following amendment:-

“3. In Chapter IV of the principal Act, Section 18 shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following Sub-sections shall be inserted:-

“(2) Notwithstanding anything contained in section 19 or sub-section of this section, but subject to the provisions of sub-clause (iii) of clause(1) of the First Schedule to the West Bengal Premises Tenancy Act, 1956, the Small Cause Court shall have jurisdiction to try all suits and proceedings for eviction of a tenant under Chapter III of the said Act as a civil court of ordinary original jurisdiction.

(3) Notwithstanding anything contained elsewhere in this Act, in respect of suits and proceedings referred to in sub-section (2) the summons and process shall be served in the manner provided by the code of Civil Procedure, 1908, for the service of summons and process.”

4. In Chapter VI of the principal Act, after section 37, the following section shall be inserted:-

37A. Notwithstanding anything to the contrary contained in this chapter or elsewhere in this Act, an appeal or revisions arising out of a suit or proceeding under sub-section (2) of section 18 shall lie to the City Civil Court established under section 3 of the City Civil Act, 1953.”

- (vi) But for the present Act of 1997, such inherent jurisdiction has not been created with the PSC Court as a court of Ordinary Original Jurisdiction for trying suits and proceedings for eviction of tenants under chapter III of the Act of 1997. The PSC Court being the creature of PSCC Act 1882, cannot exercise any jurisdiction which has not been granted by the said Act of 1882 as amended upto date and till date no amendment has been made in section 18 for the purpose of trying cases under the West Bengal Premises Tenancy Act, 1997.

(vii) The PSC Court is to act according to its own rules and procedure and the provisions of the CPC are not applicable thereto in view of section 8 of the CPC but without excluding the said procedure the provisions of the CPC have been made applicable *mutatis muntandis* and since the entire Code of Civil Procedure, as it is, being not applicable, the PSC Court cannot be termed as the court of original jurisdiction and that is why the legislature has used the term “*as a court of first instance*” without making any provisions of appeal to be preferred in the court of second instance though the Act is a special act.

3. The opposite parties herein as plaintiff filed written objection against the aforesaid application filed under order VII Rule 10 seeking return of plaint by the petitioner herein. Learned court below after contested hearing was pleased to reject petitioner/defendant’s application under order VII Rule 10 of CPC with costs.

4. Mr. Dey learned Counsel appearing on behalf of the petitioner submits that initially when the Act of 1997 was enacted w.e.f. 10th July, 2001, the jurisdiction for adjudicating ejectment suits and other reliefs were given to the Rent Controller. By the West Bengal Premises Tenancy (amendment) Act 2005, the words “*by the controller*” were substituted “*by the civil judge having jurisdiction*” and therefore any suit on the grounds enumerated in section 6 of the Act of 1997, has to be instituted and shall be tried “*by the civil judge having jurisdiction*”. Mr. Dey further contended that the PSC Court Judges are being appointed under section 7 of the PSCC Act 1882 and their jurisdiction have been specifically described in chapter IV of the Act of which

section 17 is the local limits of Jurisdiction of the Court. Therefore the judges of PSC Court cannot deal with or try the suits filed under the Act of 1997 for want of jurisdiction in terms of section 17 and 18 of the PSCC Act 1882

5. Mr. Dey further contended that the entire ordering portion of the CPC i.e. order I to Order L and other provisions i.e. section 1 to section 158 of CPC are subject to section 8 and under order LI the schedule is not at all applicable to PSC Court established under the Act of 1882. He further contended that with regard to the provisions of Appeal in the City Civil Court, necessary amendments in section 8 of City Civil Court Act have been made by substituting the “*West Bengal Premises Tenancy Act 1997*” in place of the “*West Bengal Premises Tenancy Act 1956*” by the City Civil Court (amendment) Act, 2013. He further contended that a court is always entitled to deal with the existence of its jurisdiction on the basis of certain acts which are in the jurisdictional realm. In this context he relied upon judgment of Apex Court passed in ***Hiralal Shaw Vs. Ganga Shaw and others*** reported in **(2019) 11 SCC 596**. Mr. Dey contended that section 19A of the PSCC Act of 1882 being the *pari materia* provision of order VII Rule 10 of the Code, the present plaint may be returned to the appropriate Bench of City Civil Court having jurisdiction, after setting aside the order impugned.

6. Before going to further details let me reproduce section 12A along with schedule IV as incorporated by way of amendment in the Act of 1997.

[12A. Special provisions regarding jurisdiction of Courts for trial of suits for possession.- (1) Notwithstanding anything contained in any other law, a suit or proceeding by a landlord against a tenant in which recovery of

possession of any premises to which this Act applies is claimed shall lie to the Courts, as set out in the Schedule IV and no other Court shall be competent to entertain or try such suit or proceeding.

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall, mutatis mutandis, apply to all suits and proceedings referred to in sub-section(1) except suits or proceedings which lie to the High Court at Calcutta.]

Schedule IV

[See Section 12A(1)]

Where the premises are situated on land wholly within the ordinary original civil jurisdiction of the High Court at Calcutta,-

(a) In case the value of the suit exceeds ten lakh rupees, to the High Court at Calcutta;

(b) In case the value of the suit does not exceed ten lakh rupees but exceeds sixty thousand rupees, the City Civil courts Act, 1953 (West Ben. Act XXII of 1953);

(c) In any other suit, to the Chief Judge of the Court of Small Causes constituted under the Presidency Small Causes Courts Act, 1882 (15 of 1882), in the town of Kolkata, who may try the suit himself or may transfer the suit for trial to any other Judge of the said Court who shall try the suit as a court of first instance.].

7. The petitioner herein infact questioned about incorporation of the aforesaid provisions by the State Legislature in the Act of 1997 when no amendment has been made in Section 19 of the PSCC Act 1882 and Section 8 read with order LI of the code of civil procedure. It is true that section 19 of the Act of 1882 stipulates that the Small Cause Court shall have no jurisdiction in suit for recovery of immovable property as well as suit for the determination of any other right or interest in immoveable property. It is also true that Section 8 of the CPC postulates that save and except some particular provision, the provision of the body of the CPC shall not extend to

any suit or proceeding in any court of Small cause established in the towns of Calcutta, Madras and Bombay. Mr. Dey in this context rightly pointed out that when the earlier West Bengal Premises Tenancy Act 1956 was introduced, there was also no provision for the trial of suit relating to recovery of immovable property by the PSC Court and for the said reason the legislature has made an amendment in the presidency small cause court (West Bengal amendment) Act 1999 and under section 3 of the said Amendment Act a new provision was incorporated in section 18 which stated that notwithstanding anything contained in section 19 or 19(1) to try cases under the West Bengal Premises Tenancy Act 1956, the PSC Court shall have jurisdiction to try all suits and proceedings for eviction of a tenant under Chapter III of the said Act as a civil court of ordinary original jurisdiction. It is true that no such amendment has been made by the legislature in the PSCC act 1882 in connection with the Act of 1997.

8. In the said context let me consider whether the aforesaid amendment made in section 12A read with schedule IV of the Act of 1997 confers any jurisdiction upon the PSC Court or not to try such cases. At the cost of repetition it can be referred that the provision under section 12A as incorporated by the State Legislature starts with a non-obstante clause, which states that “*notwithstanding anything contained in any other law*”. The supreme court in ***Union of India & another Vs G.M Kokil & others***, reported in **AIR 1984 SC 1022** explained the significance of using the non-obstante clause by saying that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provision that may be found either in the same enactment or

some other enactment that is to say, to avoid the operation and effect of all contrary provisions.

9. In order to enumerate the principle for determining the priority of applying the respective legislations, the non-obstante clause operates as a kind of tie-breaker provision i.e. in the event of conflict between two statutory provisions seemingly applicable to a particular situation, owing to its overriding effect, the provision carrying of non-obstante clause will be given effect to. A non obstante clause being an internal aid for construction of this statute, has been added by Legislature to section 12A in order to uphold its enforceability over the provisions still remains un-amended in the Act of 1882 and in CPC and some other provisions which are contradictory to it in the matter of conferring jurisdiction upon the court. As the Legislature cannot have two contradictory intentions, such non-obstante clause has been used to clarify the intention of the legislature about conferring jurisdiction upon the court. Since the concerned provisions of CPC and the Provisions of the Act of 1882 cannot be interpreted harmoniously with the present provisions the overriding effect of section 12A read with schedule of the Act of 1997 has to be noted and considered. Therefore the words *“notwithstanding anything contained in any other law”* must mean notwithstanding anything to the contrary contained in CPC and in the Act of 1882 and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act of 1997. This has also been made clear by incorporating sub-section (2) of section 12A which states that the provisions of the Code of Civil Procedure 1908 shall mutatis mutandis apply to all suits and proceedings referred to in sub-

section (1) of section 12 except the proceedings which lie to the High Court at Calcutta. The legislature accordingly amended section 43 of the Act of 1997 by incorporating section 43A as well as section 8 of the City Civil Court Act, 1953 in connection with appeal Revision and Review against decree or final order passed by court. The procedure for filing an appeal and the procedure to be followed in admitting and dealing with such appeal shall be the same as in the case of appeals under the Code of Civil Procedure and by making amendment of section 8 of City Civil Court Act 1953 the legislature had not curtailed the jurisdiction of City Civil Court as first appellate forum because Appeal usually lies before the City Civil Court against orders passed by PSC Court.

10. By item no. 18 read with item No. 65 of list II (State List) of Seventh Schedule, to the Constitution of India, the State Legislature undisputably competent to legislate with respect to the jurisdiction of court in connection with relation of land lord and tenant. The legislature of the State of West Bengal is therefore competent to exercise power in respect of the subsidiary and ancillary matter of conferring jurisdiction of a particular court about tenancy legislation. If the competence to legislate for conferring jurisdiction be granted by the Constitution, there is no reason to exclude such jurisdiction and as such questioning legislative competence of making amendment of section 12 of Act of 1997 without making amendment of the Act of 1882 does not arise. Since the valuation of the present suit is less than 600, it is well within the jurisdiction of the PSC Court and as such question of returning of the plaint for presentation before the City Civil Court does not arise and if such prayer is allowed the parties will also have a

chance to lose a forum. Not only that Legislature in Section 12A of the Act of 1997, in order to create jurisdiction specifically in the PSC Court for trial of such suit has used the words, “.....as set out in the schedule IV and no other court shall be competent to entertain or try such suit or proceeding.” and thereby legislature clearly excluded jurisdiction to try such suits by any other court. Accordingly the order impugned does not call for any interference by this court as court below has neither exceeded his jurisdiction nor has done anything contrary to law. I must be thankful to Mr. Dey for bringing the anomalous situations to the notice of the court and I am agreeable that the State Legislature should think of suitable amendment for incorporating the West Bengal Premises Tenancy Act, 1997 specifying jurisdiction in the relevant provisions of the Act of 1882 in the light of the presidency Small Cause Court (West Bengal Amendment) Act, 1999.

11. C.O. 1605 of 2019 is accordingly dismissed.

There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)

Later:

After passing this judgment, learned Counsel appearing on behalf of the petitioner seeks for exemption of the cost imposed by the court below.

Considering the facts and circumstances of the case, the cost imposed by the trial court while dismissing the impugned application, is hereby exempted.

(AJOY KUMAR MUKHERJEE, J.)