



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 84 OF 2021

WITH

CIVIL APPLICATION NO. 5627 OF 2024

Ranjanvan Co-operative Housing Society,
N-9, J, CIDCO, Aurangabad, Through its
Secretary, Pravin s/o Panditrao Harsulkar,
Age : 67 Years, Occu: Retired, R/o Plot No.
46, Ranjanvan Co-operative Housing
Society, N-9, J, CIDCO, Aurangabad, District
Aurangabad.

... APPLICANT

V E R S U S

1. Late Kalabai Multipurpose Social Trust,
Having its registered office at Ranjanvan
Co-op. Housing Society, N-9, CIDCO,
Aurangabad, Through its President &
Trustee Shri Vikram s/o Sakharam Jogdand,
Age : 40 Years, Occu : Business, R/o House
No. A-6, Chaudhari Classic, N-4, CIDCO,
Aurangabad.
2. Chandrakalabai Bajirao Mane
Age : 57 Years, Occu : Household.
3. Ashabai Bankat Ghural
Age : 42 Years, Occu : Household.
4. Narayan s/o Navnathrao Kute
Age : 40 Years, Occu : Trustee.
5. Suryakantrao Sakharam Wanegaonkar
Age : 42 Years, Occu : Trustee.

6. Sumanbai Navnath Borkhedkar
Age : 47 Years, Occu : Trustee.
7. Sakharam Bhanudas Jogdand
Age : 72 Years, Occu : Trustee.

Nos.2 to 7 All R/o A-6, Chaudhari Class,
N-4, CIDCO, Aurangabad.

... RESPONDENTS

Mr. Mahendra B. Kolpe, Advocate for Applicant.
Mr. Anand P. Bhandari, Advocate for Respondents.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : SEPTEMBER 26, 2024.
JUDGMENT PRONOUNCED ON: NOVEMBER 29, 2024.

JUDGMENT

. The Applicant i.e. Original Plaintiff has preferred this Civil Revision Application challenging the Judgment and decree passed by the learned District Judge-2, Aurangabad (*hereinafter referred to as 'the learned appellate court'*) in Rent Appeal No. 05/2019 dated 26/3/2021. Under the impugned Judgment, the learned appellate court has set aside the Judgment and decree dated 14/2/2019 passed by the learned 3rd Joint Civil Judge (J.D.), Aurangabad (*hereinafter referred to as 'the learned trial court'*) in Rent Suit No. 26/2013.

2. The background facts of the case are as under :

The Applicant/Plaintiff has filed the aforesaid suit for recovery of arrears of rent of Rs.5,30,000/- along with interest at the rate of 18% per annum and for eviction of Respondents/Defendants from the suit premises i.e. two halls admeasuring 60 ft. x 20 ft. with open space, having water tank facility along with portion of Plot No.2 of Ranjanvan Co-operative Society Limited, N-9, CIDCO, Aurangabad. According to the Plaintiff - Society, the suit premises is owned by it and its earlier President Mr. N. D. Zinzurde Patil had executed a Leave and License Agreement of the suit property in favour of the Respondents on 2/2/2008. The Respondents/Defendants started running a school namely, Revival English and Marathi School from the suit premises. However, Mr. N. D. Zinzurde Patil had executed the said Agreement in collusion with Respondents/Defendants without any prior meeting or resolution to that effect. The Respondents/Defendants had agreed to pay the rent of Rs.10,000/- per month and it was specifically agreed that in case of default in payment of license fees of two months, the Applicant/Plaintiff was entitled to recover the possession of suit premises.

Though the Respondents/Defendants initially paid license fees for nine months, but thereafter failed to pay further. Then by consent it was decided to continue the Agreement after 2/1/2009 by increasing 5% amount

of license fees. But, the Respondents/Defendants did not approach Plaintiff to extend that period and started occupying the suit premises illegally. The Respondents/Defendants even filed one Special Civil Suit No. 57/2010 in the Court of Civil Judge Senior Division, Aurangabad against the Municipal Corporation, Aurangabad behind the back of Applicant/Plaintiff, challenging the notice of demanding property tax of Rs.3,32,000/- in respect of the suit premises. Then the Respondents/Defendants in absence of Plaintiff compromised the said suit by paying tax of Rs.80,000/-. Thereafter the Respondents/Defendants again filed one Regular Civil Suit No. 476/2010 against the Plaintiff for perpetual injunction to protect their illegal possession. Therefore, the Applicant/Plaintiff was constrained to file the present suit for recovery of amount of rent and for eviction of Respondents/Defendants.

3. The Respondents resisted the suit on the ground of maintainability for want of notice under Section 164 of the Maharashtra Co-operative Societies Act and also for want of permission from Charity Commissioner. They claimed that the suit premises is owned by the CIDCO and the Applicant/Plaintiff is only lessee of CIDCO. They blamed Plaintiff - Society only for not to renew License Agreement further. They claimed that they had spent amount of more than Rs.2,00,000/- for the purpose of education of children and had never agreed to vacate premises after expiry of

eleven months. They came with a case that since the Plaintiff/Society had not paid the monthly taxes, notice demanding the same was served upon them and they actually deposited the taxes. According to them, the Plaintiff is trying to dispossess them illegally from the suit premises. They also claimed that suit is under valued and not tenable in view of the provisions of Maharashtra Rent Control Act, 1999 (*for short, 'the Act of 1999'*). As such they prayed for dismissal of the suit.

4. The learned trial court after conducting the trial allowed the suit of the Applicant/Plaintiff and directed the Respondents/Defendants to pay arrears of rent to the tune of Rs.3,60,000/- with interest at the rate of 6% per annum and to deliver the vacant possession of the suit premises to the Plaintiff within one month from the date of order. The learned trial court also initiated inquiry under Order 20 Rule 12(1)(c) of the Code of Civil Procedure, 1908 for determination of mesne profits. However, the learned appellate court reversed the finding of the learned trial court on the ground that the learned trial court was not having pecuniary jurisdiction to entertain the suit. In addition to that, the learned appellate court has also observed that the suit of the Plaintiff was under valued and directed it to pay deficit court fees.

5. The learned Counsel for Applicant/Plaintiff submits that the

learned appellate court has reversed the finding of learned trial court only on the ground of jurisdiction by wrongly observing that the learned trial court, being Civil Judge Senior Division, was not having any jurisdiction to try the suit, as the demand of rent more than its pecuniary jurisdiction was made. He also pointed out that the learned appellate court erred in holding that suit of the Plaintiff was under valued. He pointed out that as per Section 6 (xii) (d) of the Maharashtra Court Fees Act, 1959 (*for short, 'the Act of 1959'*), the Plaintiff-Society had valued the suit properly as per the amount of rent of one year in respect of the suit premises. He also placed reliance on the following Judgments :

1. Judgment of this Court in the case of Harilal V/s Smt. Kamal and others, AIR 1983 Bombay 483;
 2. Judgment of this Court in the case of Rajendra Suryakant More V/s Fixolite Wires and Cables Pvt. Ltd. Nashik and another, 2016(3) Mh.L.J.584;
 3. Judgment of this Court in the case of Mangesh Vasant Ajmire V/s Prdeepkumar Bansilal Mohta, 2016(5) Mh.L.J. 476; and
 4. Judgment of the Hon'ble Apex Court in the case of Smt. Geeta V/s State of U.P. and Ors., AIR 2011 Supreme Court 414.
6. On the contrary, learned Counsel for the Respondents/Defendants strongly opposed the submissions made on behalf of the Applicant/Plaintiff and supported the impugned Judgment. According to him, the Division Bench

of this Court in the case of *Radheshyam Zumbarlal Chandak V/s District Judge, Amravati and another reported in 2010 SCC OnLine Bom 1487* has already clarified the point of jurisdiction and since the amount of more than Rs.5,00,000/- was claimed by the Plaintiff - Society as an arrears of rent, the observation of learned appellate court that it should have been tried by the Civil Judge Senior Division is absolutely correct. Besides, he also relied on the following Judgments :

1. Judgment of this Court in the case of Masjid Alfuddin Ahle Hadis Trust, Nagpur V/s Jamil Ahamad Driver s/o Abdul Jalil and another, (2009) 5 Mah.L.J.853;
 2. Judgment of this Court in the case of Asif Ahmedally Porbunderwalla V/s Daulat Akbarali Porbunderwalla and others, 2014) 2 Mah.L.J. 210;
 3. Judgment of the Co-ordinate Bench of this Court in the case of Rabo Bank V/s State Bank of India in Commercial Summary Suit No. 1/2001 dated 12/2/2024;
 4. Judgment of this Court in the case of Rekha Pramodrao Deshmukh V/s Gajanan Maharaj Sansthan, Shegaon and others, (2016) 2 Mah.L.J. 813; and
 5. Judgment of the Hon'ble Apex Court in the case of Lachhman Dass V/s Santosh Singh, 1995 STPL 4988 SC.
7. Heard rival submissions and also perused the documents on record along with the impugned Judgment, and considered the Judgments relied on by the rival parties.

8. It is not in dispute that the Applicant/Plaintiff is the owner of suit premises. Moreover, relations between Plaintiff and Respondents as that of landlord and tenant are also not in dispute. The fact of running educational activities from the suit premises at the hands of Respondents is also admitted. On perusal of the Judgments of learned trial court and learned appellate court it is clearly evident that both the courts below have unanimously held that the Respondents were in arrears of rent to the extent of Rs.5,30,000/- and the Respondents/Defendants committed default in paying the same. The learned trial court has observed that it was having jurisdiction to adjudicate the suit, which according to it, was properly valued and adequately stamped. However, the learned appellate court refused to grant the decree in favour of Applicant/Plaintiff under its impugned Judgment on the ground that the learned trial court was not having pecuniary jurisdiction to entertain the suit. It also observed that the suit of the Plaintiff was under valued, and therefore, directed them to pay the deficit court-fees by valuing the suit at Rs.6,50,000/-.

9. It is significant to note that the observation of the learned trial court that competent authority was not having jurisdiction to entertain the dispute between the parties appears proper, since it is admitted that the suit premises was given for educational purpose and not for residential purpose. Further, the observation of the learned trial court that the Plaintiff – Society

had claimed arrears of rent to the tune of Rs.5,30,000/-, but they were entitled only for Rs.3,60,000/- being the rent for last three years preceding the filing of suit, also cannot be faulted with.

10. The main dispute in the present Revision Application is in respect of jurisdiction of the learned trial court in adjudicating the matter. The learned trial court has observed that though the Plaintiff – Society claimed arrears of rent of Rs.5,30,000/-, but under the legal provisions it was only entitled to claim for last three years which is admittedly Rs.3,60,000/-. By this observation, the learned trial court has held that suit of the Plaintiff – Society was within its pecuniary jurisdiction of Rs.5,00,000/-. It is not in dispute that initially the suit was filed in the court of Civil Judge Senior Division, Aurangabad being Special Civil Suit No. 51/2013, however, that suit being a rent suit, was then transferred to the learned trial court i.e. Civil Judge Junior Division as per Section 33(1)(c) of the Act of 1999 with consent of the rival parties and in view of order passed by the learned Civil Judge Senior Division to that effect below Exhibit-1 on 2/8/2013. The main dispute between the parties, therefore, is in respect of pecuniary jurisdiction only.

11. The learned Counsel for Applicant/Plaintiff is claiming that irrespective of the claim amount, the jurisdiction of deciding the rent suit as

per Section 33(1)(c) is conferred upon the Civil Judge Junior Division only. On the contrary, the learned Counsel for Respondents/Defendants by placing reliance on the Judgment of Division Bench of this Court at Nagpur in the case of *Radheshyam Zumbarlal Chandak* (cited supra) submitted that the Division Bench of this Court has clarified that the Ordinary Original Civil Jurisdiction conferred upon the Civil Judge Junior Division or the Civil Judge Senior Division will be available to the parties and such civil suit will have to be tried by the concerned Judges, depending upon their pecuniary limits of jurisdiction, as provided by Section 24 of the Maharashtra Civil Courts Act, 1869 (for short, 'the Act of 1869'). It appears that the learned appellate court, by relying upon this observation of the Division Bench of this Court in the aforesaid case has opined that the rent suit should have been decided by the Civil Judge Senior Division as the arrears of rent more than pecuniary jurisdiction of Civil Judge Junior Division were claimed.

12. To decide this only controversy, relevant provisions under the Act of 1999 are to be looked into. Under the Act, jurisdiction of courts is provided in Section 33 which reads thus :

“33. Jurisdiction of courts

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any

other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, -

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897, such court, and

(c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887, and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.”

13. The learned Counsel for Applicant/Plaintiff heavily relied on the language of Section 33 (1) (c) and pointed out that the statute has clearly given jurisdiction to try the rent suit irrespective of amount of claim to the Civil Judge Junior Division and in its absence to Civil Judge Senior Division.

14. On the contrary, the learned Counsel for Respondents/Defendants is relying on the observation of the Division Bench of this Court in the case of *Radheshyam Zumbarlal Chandak* (cited supra), as mentioned above. It is not in dispute that the suit premises is situated at Aurangabad and the dispute is between landlord and tenant. As such, there is no question of applicability of Section 33(1)(a) or 33(1)(b) in the instant matter, as the suit premises is outside the territorial jurisdiction of Mumbai and for Aurangabad area no court of Small Causes is established under the Provincial Small Causes Courts Act, 1897. The language of Section 33(1)(c) clearly indicates that excluding the areas mentioned in clauses (a) and (b) of Section 33(1), the Civil Judge Junior Division will be having jurisdiction to try the rent suit or dispute between landlord and tenant under the Act of 1999 and only in its absence, the court of Civil Judge Senior Division will have such jurisdiction. Thus, apparently the learned trial court had the jurisdiction of trying the present dispute.

15. The learned Counsel for Respondents/Defendants, however, disputed the aforesaid provision of law and placed reliance on the observation of the Division Bench of this Court in the case of ***Radheshyam Zumberlal Chandak*** (*cited supra*), wherein following observation is made :

“33. From the provisions pointed out above and the discussion followed, it is clear that the Small Causes Courts Act deals with the jurisdiction therein to be exercised either by a Court of Small Causes established under Section 5 of the said Act or by a Civil Judge invested with the jurisdiction of a Court of Small Causes by the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act. If neither a Court of Small Causes is established at a particular place, nor has the High Court in exercise of its powers under section 28(1) of the Civil Courts Act invested any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts, then obviously the Ordinary Original Civil Jurisdiction conferred upon the Civil Judge, Junior Division, or the Civil Judge, Senior Division, is available. However, in that event, such a suit, which is otherwise cognizable by a Court of Small Causes, would be tried by such Civil Judge as regular civil suit in accordance with the provisions of the Code of Civil Procedure, depending upon the pecuniary limits of its jurisdiction, as provided under Section 24 of the Civil Courts Act.”

16. On going through the aforesaid observation, the Division Bench of this Court has clarified that the Civil Judge Junior Division or Civil Judge Senior Division will be having jurisdiction to try the suit depending upon their pecuniary limits of its jurisdiction, as provided by Section 24 of the Maharashtra Civil Courts Act. Thus, the learned appellate court observed that since the pecuniary jurisdiction of learned trial court was below Rs.5,00,000/-,

it was not empowered to entertain the dispute between the parties claiming arrears of rent beyond its pecuniary jurisdiction i.e. Rs.5,30,000/-. However, on careful reading of the aforesaid observation, it appears that such clarification will be applicable, only if the court of Small Causes is not established at that particular place or the High Court in exercise of its powers under Section 28(1) of Maharashtra Civil Courts Act has not invested any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of civil suits cognizable by such Courts. Thus, on plain reading it appears that the limit of pecuniary jurisdiction for entertaining the suit will be applicable only in the two contingencies mentioned above.

17. It is extremely important to note that the learned appellate court has clearly observed that there was no material or finding of the lower court that it was invested with powers of Small Causes Courts. Perhaps, due to this observation the learned appellate court has held that the learned trial court passed decree without jurisdiction. However, on minute perusal of Judgment passed by the learned trial court, it is clearly mentioned in paragraph No. 27 that it was having powers to try all kinds of civil suits including rent suit.

18. Thus, the learned appellate court has definitely erred in observing that there was no finding of lower court or any material to show that it was

invested with powers of Small Causes Courts. The observation in the case of ***Radheshyam Zumbarlal Chandak*** (*cited supra*) by the Division Bench of this Court would be applicable, only if the learned trial court was not invested with the powers of Small Causes Courts. Therefore, considering the jurisdiction conferred upon the Civil Judge Junior Division as per Section 33(1)(c) and also the location of suit premises at Aurangabad, the finding of learned appellate court that the learned trial court was not having jurisdiction, is definitely erroneous and needs to be discarded. Therefore, it has to be held that the learned trial court was definitely having jurisdiction to entertain the dispute between the parties.

19. The learned Counsel for Applicant/Plaintiff also supported the finding of the learned trial court that the suit was properly valued. On the contrary, it appears that the learned appellate court has held that the suit is under valued and it should have been valued at Rs.6,50,000/-. The learned Counsel for Plaintiff pointed out Section 6(xii)(d) of the Maharashtra Court Fees Act and claimed that since the recovery of suit premises is claimed by the landlord/Society from the Respondents/Defendants, the suit is correctly valued for Rs.1,20,000/-, which is equal to the one year rent of the suit premises. According to him, no other valuation is required to be considered. However, in the aforesaid Section 6(xii)(d), the mode of determination of

valuation for the categories of suit mentioned therein, is given. However, nothing is mentioned therein as to how the computation of fees payable for recovery of rent is to be done.

20. The learned appellate court has observed that the Plaintiff – Society only computed the fees payable in respect of possession of the suit premises, but did not value the suit on the claim of arrears of rent amounting to Rs.5,30,000/-, and therefore, directed that the deficit court-fees is required to be paid by valuing the suit for Rs.6,50,000/- and not Rs.1,20,000/-. The finding of learned appellate court to that effect is in consonance with the legal provisions in respect of computation of fees payable in certain suits. In Section 6(xii)(d) nothing is mentioned about the category of suit claiming arrears of rent, and therefore, the claim being for money, can be valued according to the amount as per Section 6(i) of the said Act. Thus, the submission made on behalf of the learned Counsel for Plaintiff – Society has to be discarded that no deficit court-fees on the valuation of claim for arrears of maintenance is required.

21. Thus, considering all the aspects discussed above, the finding of learned appellate court that the learned trial court was not having pecuniary jurisdiction to decide the suit, is not in consonance with the law, and

therefore, the Judgment and order passed by the learned appellate court needs to be quashed and set-aside except clause (3) of the operative part, whereby the Applicant/Plaintiff is directed to pay the deficit court-fees by valuing the suit at Rs.6,50,000/-. In view of the same, present Revision Application is partly allowed. The Judgment and decree passed by the learned trial court in Rent Suit No. 26/2013 is confirmed by setting aside the Judgment and order passed by the learned appellate court in Rent Appeal No.5/2019. However, the direction given by the learned first appellate court under clause (3) of operative part of the order shall remain as it is. The Civil Revision Application is, accordingly, disposed of along with pending Civil Application No.5627/2024. The ad-interim relief, if any, granted earlier also stands vacated.

(SANDIPKUMAR C. MORE, J.)

22. The learned Counsel for Respondents, after pronouncement of Judgment submitted that the effect of this Judgment be stayed for further period of eight weeks. However, the learned Counsel for Applicant strongly opposed the same and submitted that the Respondent – Institution has not paid any amount of rent and at present there are arrears of rent to the tune of Rs.18,00,000/-.

23. The learned Counsel for Respondents submits that he would have

to take instructions for payment of arrears of rent. Under such circumstances, request made by the learned Counsel for Respondents for staying the effect of this Judgment is refused.

(SANDIPKUMAR C. MORE, J.)

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