



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 1 OF 2024

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Kothala Road, Sarjepura, Ahmednagar.
 2. The Depot Manager,
Maharashtra State Road Transport
Corporation, Newasa Depot, Newasa (Kd),
Tq. Newasa, Dist. Ahmednagar
- ..Applicants
(Original Defendants)

VERSUS

Akshay S/o Raju Chandane,
Age : 26 Years, Occ. Business,
R/o. Newasa (Bk) Taluka Newasa,
Dist. Ahmednagar.

.. Respondent
(Original Plaintiff)

.....

Mr. Manoj Dharmraj Shinde, Advocate for the Applicants.
Mr. S.P. Katkar, Advocate for the Respondent.

.....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 18th April 2024

ORDER:-

1. The applicants, who are the Divisional Controller and Depot Manager of Maharashtra State Road Transport Corporation (hereinafter referred to as "MSRTC.") Ahmednagar Division, have challenged the order dated 16.10.2023, below Exhibit 14, in Regular Civil Suit No. 932 of 2023 passed by the learned trial Court i.e. 2nd Joint Civil Judge, Junior Division, Newasa, District Ahmednagar. Under the impugned order, the

learned trial Court has rejected the application (Exhibit-14) filed by the present applicants in the aforesaid Civil Suit seeking rejection of plaint under Order VII Rule 11 (d) of the Code of Civil Procedure, since there is bar under Section 8(A) of Bombay Government Premises (Eviction) Act, 1955 (hereinafter referred to as “ the Act”).

2. The present respondent/plaintiff has filed the aforesaid Civil Suit for injunction against the applicants/defendants restraining them not to interfere with his business in Chikki stall allotted to him, as per notice dated 24.08.2023. The application for temporary injunction in the said suit is still pending. According to the respondent/plaintiff, the applicants/MSRTC has allotted him the Chikki stall, which is the suit premises in the present suit, under an agreement dated 05.12.2022 till 20.12.2027. As such, the period of such agreement is still available for the respondent/plaintiff.

3. The learned counsel for the applicants/MSRTC vehemently argued that the respondent/plaintiff along with one person committed breach of the agreement by making assault on the employee of MSRTC, and therefore, as per Section 4 of the Act, Competent Authority has issued an eviction notice to the respondent/plaintiff. However, the

respondent/plaintiff, despite the bar under Section 8(A) of the said Act, filed suit against the MSRTC wherein plaintiff is liable to be rejected. He made reference to the conditions of an agreement between MSRTC and respondent/plaintiff and pointed out that as per clause-24 of the said agreement, the respondent/plaintiff has admitted that any dispute in respect of the suit premises would be subjected to the provisions of the said Act. However, still respondent/plaintiff filed suit in civil Court, which is completely barred by law as aforesaid.

4. On the contrary, the learned counsel for the respondent/plaintiff strongly supported the impugned order and pointed out that there was no breach committed by the respondent in respect of any of the provisions of the aforesaid Act. According to him, the bar under Section 8(A) of the said Act is not absolute since the notice issued by MSRTC for eviction from the suit premises does not disclose any breach as per Section 4 of the Act on the part of respondent/plaintiff.

5. Heard rival submissions. Also perused the documents on record along with the impugned order.

6. Admittedly, as per Section 8A of the Act, there appears bar to the jurisdiction of Civil Court. For quick reference the

said Section is reproduced herein below :-

“8-A. No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Government premises on any of the grounds specified in Section 4 or the recovery of arrears of the rent or the damages payable for use or occupation of such premises”.

7. However, on going through the said Section carefully, it appears that the bar applies only for the eviction of any person from any Government Premises on any of the grounds specified in Section 4 or the recovery of arrears of the rent or the damages payable for use of such premises. Therefore, to ascertain whether the aforesaid bar is absolute, a reference has to be made to the provision under Section 4 of the Act, which is reproduced herein below :-

“As per Section 4 if the competent authority is satisfied

a) that the person authorized to occupy any Government premises, has whether before or after the commencement of this Act,

i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or

ii) sub-let the whole or any part of such premises, without the permission of the State Government, or the competent authority, or the officer who has or in whose name the premises are taken on behalf of the State

Government, or any other officer designated by the State Government in this behalf, or

ii-a) committed, or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises, or

iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such premises,

b) that any person is in unauthorized occupation of any government premises, or

c) that any government premises named are required for any other government purpose.

The competent authority may by notice served by post or by affixing copy of it on the outer door or some other conspicuous part of such premises or in such other manner as may prescribed order that, that person as well as any person who may be occupation of the whole or any part of the premises shall vacate them within one month of the date of service of notice”.

8. In the notice dated 24.08.2023, the MSRTC has asked vacant possession of the suit stall from respondent/plaintiff since the plaintiff and one Sultan Kachru Shaikh, beaten the employee of MSRTC when the said employee had asked them as to why they were selling goods beyond/except the goods mentioned in the license. However, if the report lodged by the said employee in Newasa Police Station is perused, not a single word has been uttered by the said employee that he had asked as to why the respondent and his friend were selling the goods beyond/except the goods mentioned in the license. As such,

prima facie it appears that there is no breach committed by the respondent/plaintiff of the Act, as mentioned in Section 4 of the said Act. As such, the present suit is not in respect of the notice issued in view of Section 4 of the Act. Since the bar under Section 8A of the Act is in respect of contravention of Section 4 only, it cannot be said that the said bar of jurisdiction applies to the instant matter which is only in respect of injunction.

09. Even otherwise also, the notice for eviction appears as premature in view of the agreement dated 05.12.2022, wherein provision of three months' prior notice is made. Thus, the observation of the learned trial Court that the present plaint is not based on any of the grounds mentioned in Section 4 of the Act and therefore, there is no bar under Section 8(A) is not applicable, appears to be proper. In view of the same, no substance is found in the application and accordingly it stands dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni