

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.30 OF 2024

Shah Construction Company Ltd.	...Applicant
V/s.	
The Board of Mumbai Port Authority	...Respondent

Adv. Viren Asar a/w. Sohil Saiyed, Ahuramazda Postvala, Shantanu Asar and Afrin Dalal i/b. Saiyed Sahil M. Nagamiya for the Applicant.

Adv. Vishal Talasania a/w. Adv. Amit Bhave i/b. Adv. Milan Bhise & Co., for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 13 MARCH 2024

PC.:

1. Mr.Asar, learned counsel appearing for the applicant seeks liberty to amend the prayer clause of the Civil Revision Application, by adding a prayer a-1 challenging the impugned judgment and decree dated 10 May 2012 passed by the Trial Court for L.E & .C Suit No.247/293 of 1989.
2. Liberty granted as prayed for.
3. Amendment to be carried out forthwith.
4. Civil Revision Application is admitted. With the consent

of the learned counsel for the parties, the Civil Revision Application has been taken up for final hearing, forthwith.

5. This Civil Revision Application challenges the concurrent findings recorded by the Trial Court and the Appellate Bench of Court of the Small Causes, at Mumbai. The respondent had filed an eviction suit under Section 41 of the Presidency Small Cause Courts Act, 1882 against the applicant herein. The said eviction suit was decreed in favour of the plaintiff, and an appeal filed by the original defendant was also dismissed. Therefore, the present Civil Revision Application is filed under Section 115 of the Code of Civil Procedure, 1908 challenging the concurrent findings recorded by both the courts below.

6. Mr. Asar, learned counsel for the applicant submits that the suit was lodged on 8 November 1989 in the Court of Small Cause, being a suit under Section of the 41 of the Presidency Small Cause Courts Act, 1882 for eviction. He submits that the said suit itself was not maintainable as held by the Division Bench of this Court in the judgment of *Husain Alie Sharif Punjwani V/s. The Board of Trustees of Port of Bombay* reported in *2017 (5) BCR 139*

that any suit filed by the BPT now known as (MBPT) before the 21 September 1989, i.e., date when the Estate Officer was appointed under the Public Premises Eviction Act, for BPT, would be maintainable before the Small Cause Court. He submits that admittedly in the present eviction suit filed before the Small Causes on 8 November 1989, i.e., after the cut-off date, therefore, the proceedings itself was not maintainable.

7. Mr. Talsania, Learned counsel for the respondent submits that the Plaint was in fact affirmed much before the same being lodged. He submits that it can be seen from verification clause of the plaint that the same was affirmed on 19 January 1989. Hence, according to him, the suit was within cut-off date and the same was maintainable. He submits that two courts have concurrently held against the respondent and the eviction decree with reasons have been passed therefore this Court under Section 115 of the Code of Civil Procedure should not entertain this Civil Revision Application and the same should be dismissed.

8. I have considered the judgment cited *Hussainali Sharif Punjwani* (Supra) relied by the learned counsel for the applicant passed the Division Bench of this Court. The paragraph No.50 of

the said judgment reads as under :

In the result, accepting the submissions of the learned Senior Counsel Mr. Aaney appearing for the Respondents/BPT and rejecting the submissions of the learned Senior Counsel Mr. Kumbhakoni appearing for the Applicant, we hold that the word “entertain” used in Section 15 of the said Act would mean that the Small Cause Court would have jurisdiction to hear all such suits for eviction which were lodged/filed before 21/09/1989 and on the other hand the Small Causes Court would continue to have jurisdiction to decide those suits which were pending as on 21/09/1989. The Reference is answered accordingly. All these matters are remanded to the learned Single Judge for deciding the other issues.

9. Hence, the Division Bench of this Court has interpreted the word “entertain” as used in section 15 of the Public Premises Eviction Act, and has come to a finding that all suit filed before 21 September 1989 before the Court of Small Causes are entertainable. In the present proceedings though Mr. Talsania is correct that, the plaint was affirmed on 19 January 1989, however, after carefully going through the docket of the plaintiff which has been enclosed at Page No.108 of the proceedings, it appears from the rubber stamp of the Court of Small Causes that the plaint was lodged on 8 November 1989. So also if the impugned judgment of trial court is considered the first page itself shows from the rubber stamp which reads that the suit was filed on 8 November 1989.

Hence, according to me, there is no ambiguity that the plaint in the present proceedings was alleged on 8 November 1989. Therefore, the suit filed under Section 41 of the PSCC should not be entertained. Hence, according to me, the present Civil Revision Application needs to be allowed. The Civil Revision Application is allowed in terms of prayer clause (a). The prayer clause (a) of the Civil Revision Application reads as under :-

This Hon'ble Court be pleased to call for the records, papers and proceedings on the file of the Hon'ble Small Causes Court Appellate Bench in P Appeal No.32 of 2012 in L.E. & C Suit No.247/293 of 1989, and after considering the veracity, legality, correctness of the Impugned Judgment and Order dated 26th October 2021 **at Exhibit "A" hereto**;- be pleased to quash and set aside the same.

9. At this stage Mr. Talsania, learned counsel appearing for the respondent submits that his client would like to file a fresh proceeding against the applicant for eviction. He submits that the time taken by the applicant of pursuing the present proceedings would be excluded.

10. Since the present proceedings was filed under a wrong belief, therefore, time taken by the respondent original plaintiff for pursuing this proceedings should be excluding while considering the issue of limitation, if any new proceedings are filed by the

respondent against the applicant. Only limited to the grounds taken in the present proceedings.

11. Civil Revision Application is disposed of. Consequently, interim applications also stand disposed.

(RAJESH S. PATIL, J.)