

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.275 OF 2024**

- 1 The Maharashtra State Co-operative Rural Multipurpose Development Bank Limited (in Liquidation) through its Liquidator  
A Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office at 15-A, Morvi Lane, Chowpatty, Mumbai – 07.
- 2 The Liquidator  
The Maharashtra State Co-operative Rural Multipurpose Development Bank Limited (in Liquidation)  
A Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office at 15-A, Morvi Lane, Chowpatty, Mumbai – 07.

V/S

Dadajee Dhakjee Pvt. Ltd.  
A Company incorporated under the  
Indian Companies Act, 1913, having  
its registered office at Shanghraika House,  
4<sup>th</sup> Floor, 431, Dr. Dadasaheb Bhadkamkar  
Marg, Opera House, Mumbai – 400 004  
and also having its Address at Shree Pant  
Bhuvan, S.V.P. Road, Chowpatty,  
Mumbai – 400 007.

***Mr. Kirit Hakani*** with Ms. Niyati Mankad *for the Applicants.*

***Mr. Pradeep Thorat*** i/b Ms. Aditi Naikare for Respondent.

**CORAM: SANDEEP V. MARNE, J.**  
**RESERVED ON : 25 JUNE 2024.**  
**PRONOUNCED ON : 01 JULY 2024.**

**JUDGMENT:**

1 Applicants have filed this Revision Application challenging the order dated 14 February 2024 passed by Appellate Bench Small Causes Court in P Appeal No.294 of 2022. The Appellate Bench has allowed the Appeal and has set aside order dated 12 October 2022 passed by the Small Causes Court on application at Exhibit-31, by which the Small Causes Court had rejected the Plaint under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908. (**Code**). The Appellate Bench has restored the suit bearing TE & R Suit No.78/102 of 2010.

2 Facts of the case, in brief, are that Plaintiff landlord has instituted TE & R Suit No.78/102 of 2010 against the Maharashtra State Co-operative Rural Multipurpose Development Bank Limited and Liquidator appointed on the Bank (**Defendant**) seeking recovery of possession of suit premises totally admeasuring 15,000 square feet on ground, mezzanine and first floor of Building 15-A, Morvi Lane, Chowpatty, Mumbai - 400 007. The suit is filed under provisions of Section 41 of the Presidency Small Causes Courts Act, 1882 (**PSCC Act**). The Plaintiff has averred in the paragraph 3 of the Plaint that the Defendant is exempted from protection under the Maharashtra Rent Control Act, 1999 (**MRC Act**) by virtue of section 3(1)(b). It is further averred that the Defendant is also a Corporation established under the said Act. Thus, eviction suit is filed under provisions of section 41 of the PSCC Act on the ground that the Defendant is not entitled to protection under the provisions of the MRC

Act. Defendants filed application at Exhibit-31 seeking rejection of Plaint under provisions of Order VII Rule 11 (d) of the Code by referring to the averments made in paragraph 19 of the Plaint, in which the Plaintiff has contended that the reliefs claimed in the Plaint arise out of statutory provisions of MRC Act. Defendants contended that the first Defendant is not a Bank nor a Corporation and that therefore Defendant is protected tenant under the provisions of the MRC Act. It was therefore contended that the suit under section 41 of the PSCC Act was barred. The Application was opposed by Plaintiffs by filing Affidavit-in-Reply contending that the suit under section 41 of the PSCC Act was maintainable in view of non-availability of protection to the Defendants under the MRC Act.

3 The learned Single Judge of the Small Causes Court at Mumbai allowed the application filed by the Petitioner at Exhibit-31 by its order dated 12 October 2022 and rejected the Plaint under Order VII Rule 11(d) of the Code. Plaintiff filed P. Appeal No.294 of 2022 before the Appellate Bench of the Small Causes Court. The Appellate Bench has allowed the Appeal and has set aside the order dated 12 October 2022 and has restored the suit filed by Plaintiff. Aggrieved by the order passed by the Appellate Bench, Petitioners have filed the present Revision Application.

4 Mr. Hakani, the learned counsel appearing for the Applicants/Defendants would submit that the Appellate Bench of the Small Causes Court has erred in setting aside the order dated 12 October 2022 passed by the Small Causes Court rejecting the Plaint. That the Plaintiff has specifically averred in paragraph 19 of the Plaint that the reliefs claimed in the Plaint arise out of provisions of the MRC Act and that

therefore the suit filed against protected tenant under section 41 of the PSCC Act is clearly barred by provisions of section 33 of the Rent Act. He would submit that the Appellate Bench has erroneously assumed that the Defendant-Bank is a Scheduled Co-operative Bank, in absence of any averment to that effect in the Plaint. That it is a settled law as per the judgment of this Court in ***Shetkari Sahakari Sangh Ltd. Kolhapur vs. Dilip Shankarrao Patil***, Second Appeal No.126 of 2023, decided on 25 April 2024 that the Co-operative Bank cannot be treated as Corporation within the meaning of section 3(1)(b) of the MRC Act. That since Defendant is neither a Bank within the meaning of Proviso to Section 3(1)(b) of the Rent Act nor a Corporation established by or under Central or State Act, the Defendant is entitled to protection under the Rent Act and the suit filed by the Plaintiff under section 41 of the PSCC Act is clearly not maintainable. Relying on the judgment of the Apex Court in ***I.T.C. Limited vs. Debts Recovery Appellate Tribunal & Ors.***, (1998) 2 SCC 70, Mr. Hakani would contend that if the Plaint is based on illusion of cause of action by clever drafting, the Court is justified in rejecting the Plaint under Order VII Rule 11(a) of the Code on the ground that no valid cause of action is shown. He would submit that though the application was filed under Order VII Rule 11(d) of the Code, nothing prevented the courts below from considering the same as having been filed under clause (a) of Order VII Rule 11 of the Code as well. Mr. Hakani would submit that the Plaint is not rejected, the same would result in unnecessary conduct of trial of the suit when the outcome thereof is more than apparent. That the Small Causes Court had therefore rightly nipped such baseless and vexatious suit in its bud by rejecting the Plaint. He would pray for setting aside the order passed by the Appellate Bench.

5     *Per contra*, Mr. Thorat, the learned counsel appearing for the Respondent/Plaintiff would oppose the Application and submit that for rejection of the Plaint under Order VII Rule 11 of the Code, averments in Plaint alone are required to be taken into consideration. That specific averments are made in paragraph 3 of the Plaint that the Defendant is exempted from protection under the Rent Act. That therefore the suit filed under section 41 of the PSSC Act is clearly maintainable. That otherwise there is no bar to maintainability of the suit filed under section 41 of the PSSC Act under the provisions of section 33 of the MRC Act. That the only ground urged by the Defendant while seeking rejection of Plaint was that the suit was barred by law, without indicating any specific provision under which such bar operates.

6     Mr. Thorat would submit that whether Defendant is a Bank or whether it is a Corporation and whether it is exempted from protection under the MRC Act are questions which are to be decided after conduct of trial in the suit. That therefore Plaint cannot be rejected at the inception by seeking to answer the issues which can only be decided on conclusion of Trial in the suit. Mr. Thorat would pray for dismissal of the Revision Application.

7     Rival contentions of the parties now fall for my consideration.

8     For considering the issue as to whether the Plaint in the suit can be rejected under any of the clauses of Order VII Rule 11 of the Code, it is necessary to consider only the averments made in the Plaint. The relevant averments in the Plaint in paragraphs 2, 3, 19 and 20 read thus:

“2. The suit premises was sub-demised to the Maharashtra State Development Bank Ltd., for a period of 30 years as aforesaid under a Deed of Lease dated 15th April, 1974. During the substance of the said Lease, the said Maharashtra State Development Bank Ltd. Got merged and amalgamated with the Defendant in or about the year 2000 and since then the Defendant became the lessee of the Plaintiff for a residue period and continue to pay the monthly rent at Rs.25,000/- PLUS Rs.5,835/- as Property Taxes to the Plaintiff in respect of the suit premises. Hereto annexed and marked as Exhibit-"B" is the copy of the said Deed of Lease dated 15th April, 1974.

3. Plaintiff states that the said Lease has expired by efflux of time and hence the Plaintiff is entitled to recover the possession of the suit premises. The Plaintiff further states that the premises let to the Defendant is exempted from the protection of the Maharashtra Rent Control Act, 1999 by virtue of Section 3(1) (b) of the said Act. The Defendant is also a Corporation established under the State Act.

19. The Plaintiff states that suit claim is not barred by the Law of Limitation. The reliefs as claimed in the Plaint arises out of the statutory provisions as more particularly contained in the Maharashtra Rent Control Act, 1999. This Hon'ble Court therefore has exclusive jurisdiction to entertain and try the suit.

20. The suit premises are situate in Mumbai. The cause of action has arisen in Bombay. The suit is between Plaintiff and Defendant, who is tenant and lessee. The suit is relating to recovery of vacant possession of the premises. Therefore, this Hon'ble Court has jurisdiction to entertain and try the suit under Section 41 of Presidency Small Causes Court Act, 1882.”

9 Plaintiff has thus filed suit seeking recovery of possession under provisions of section 41 of the PSCC Act. Section 41 reads thus:

**“41. Suits or Proceedings between licensors and licenses or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.**

(1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or

charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply.”

10 Thus under section 41 of the PSCC Act, Small Causes Court is invested with jurisdiction to entertain and try all suits between landlord and tenant relating to recovery of possession of immovable property situated in Greater Mumbai. However sub-section (2) of section 41 makes an exception providing that nothing contained in sub-section (1) applies to suits or proceedings for recovery of possession of any immovable property to which provisions of the old Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applies, which Act is now substituted by the provisions of the MRC Act. Section 59 of MRC Act provides thus:

**59. Removal of doubt as regards proceedings under Chapter VII of the presidency Small Causes Courts Act, 1882.**

For the removal of doubt it is hereby declared that, unless there is anything repugnant in subject or context, references to suits or proceedings in this Act shall include reference to proceedings under Chapter-VII of the Presidency Small Causes Courts Act, 1882, and reference to decrees in this Act shall include reference to final orders in such proceedings.

Thus, if provisions of MRC Act are proved to be applicable to a Defendant in a suit, the suit under section 41 of the PSCC Act cannot be maintained. This is the bar about maintainability of suit under section 41 of the PSCC Act. The issue is whether there is any averment in the Plaint to suggest that the protection to the Defendant is applicable under the provisions of the MRC Act. In this regard, the averment made by the Plaintiff in paragraph 19 of the Plaint is relevant wherein it has contended that “*the reliefs as claimed in the Plaint arises out of statutory provisions as more particularly contained in the Maharashtra Rent Control Act, 1999.*” Thus,

there is a specific averment in the plaint that the relief of recovery of possession arises out of the provisions of the MRC Act. Though there is apparent conflict between the contents of paragraph 3 and 19 of the Plaint, the Plaint does contain an averment that provisions of MRC Act are applicable in respect of reliefs claimed in the suit.

11 The learned Judge of the Small Causes Court has particularly highlighted the averment in paragraph 19 of the Plaint for the purpose of holding the Plaint in the suit deserves to be rejected under Order VII Rule 11(d) of the Code.

12 The Appellate Bench has however reversed the finding of the Single Judge of the Small Causes Court by recording following finding:

“12. In the case in hand, plaintiff has specifically averred that the defendant is State Co-operative Rural Multipurpose Development Bank incorporated under the provisions of Maharashtra Co-operative Societies Act. Prima facie, defendant appears a scheduled Co-operative Bank which borrows money from the Reserve Bank of India and is given membership to clearing houses. In view of this, as per explanation appended to Rule (b) of sub-section (1) of Section 3 of MRC Act, a premises let out to such bank is exempted from the application of MRC Act. The plaintiff has invoked Section 41 of the PSCC Act for maintaining the present eviction proceeding against the defendant. Suit in its present form does not appear to be barred by any law.”

13 Thus contrary to the settled law that the averments of Plaint alone are required to be considered while deciding application under Order VII Rule 11 of the Code, the Appellate Bench has relied upon extraneous material for deciding the issue of rejection of Plaint. The finding that ‘*Prima facie Defendant appears a Scheduled Co-operative Bank which borrows money from the Reserve Bank of India and is given membership to*

*clearing houses*' is recorded by the Appellate Bench without there being any pleading to that effect in the Plaint. The Appellate Bench has therefore wrongfully presumed that the Defendant is a Bank within the meaning of section 3(1)(b) of the MRC Act. For raising that presumption, there is no averment in the Plaint to the effect that Defendant is a Scheduled Bank. The Appellate Bench in my view has committed error in taking into consideration material outside the Plaint for deciding the issue of rejection of Plaint under Order VII Rule 11 of the Code.

14 Since Plaintiff itself averred in paragraph 19 of the Plaint that reliefs claimed by it in the suit arise out of provisions of the MRC Act, the jurisdiction of Small Causes Court to entertain the eviction suit under subsection (2) of section 41 of the PSCC Act is clearly barred. The jurisdiction to entertain eviction suit against a protected tenant under MRC Act would lie, though before same Court, but under provisions of section 33 of the Rent Act which provides 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 a 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 suit 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.”

15 By now, it is settled position of law that provisions of Order VII Rule 11 of the Code are inserted to ensure that vexatious suit disclosing no cause of action or which are barred by provisions of law are thrown at the inception. In this regard, profitable reference can be made to the recent judgment of the Apex Court in ***Ramisetty Venkatanna & Anr. vs. Nasyam Jamal Saheb & Ors.***, 2023 SCC OnLine SC 521, in which it is held in paragraphs 24 to 27 and 30 as under:

“24. In the case of ***T. Arivandandam*** (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. **The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled.** And, if clever drafting has created the illusion of a cause of action, nip it in the bud at

the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.”

25. In the case of ***Sopan Sukhdeo Sable v. Charity Commr.***, (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

***12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled.*** If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)”

26. In the case of ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal***, (2017) 13 SCC 174, this Court observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. **The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC.** Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the

illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

27. In the case of ***Ram Singh v. Gram Panchayat Mehal Kalan***, 1986) 4 SCC 364, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

30. Now so far as the reliance placed upon the decision of this Court in the case of Nusli Neville Wadia (supra) is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written statement. ***However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting.***

*(emphasis supplied)*

16 Similarly the Apex Court in ***K. Akbar Ali vs. K. Umar Khan & Ors.***, (2021) 14 SCC 51, held in paragraph 13 as under:

“13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.”

17 In the present case, I am of the view that rejecting the Plaint under Order VII, Rule 11 (d) of the Code would also enure to the benefit of the Plaintiff, who can then institute suit under section 33 of the Rent Act to seek recovery of possession from the Defendant. One of the averments in the Plaint is that Defendant is a Corporation established under the State Act. In ***Shetkari Sahakari Sangh Ltd. Kolhapur*** (supra), this Court, after considering the entire law on the subject, has held that mere status of a party as society does not automatically make it exempt it under provisions

of section 3(1)(b) of the MRC Act and that only a corporation established by or under Central or State Act is exempted from provisions of the Rent Act. This Court has considered the distinction between corporation formed by association of persons and governed in accordance with provisions of the Central or State Act and corporation established by or under statute and held in paragraph 27 as under:

“27) Thus, the Apex Court has highlighted the marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. It has held that the expression 'Corporation' must be in the context mean a corporation created by the legislature and not a body or society brought into existence by an act of a group of individuals. The Apex Court held that merely because the Cooperative Store Limited was registered under the Bombay Co-operative Societies Act, 1925 it is not a statutory body as the same is not created by a statute. That it is a body created by an act of group of individuals in accordance with the provisions of a statute. In my view, the judgment of the Apex Court in **S.S. Dhanoa** clearly applies to the present case where the Defendant- Society can be treated as a Corporation brought into existence by an act of group of individuals. It is not statutory corporation created by legislature.”

18 Though the merits of the contention of the Plaintiff in paragraph 3 of the Plaint that Defendant is a Corporation established under the State Act cannot strictly be decided while considering application for rejection of Plaint under Order VII Rule 11 of the Code, in my view, this would merely be an additional ground why the Plaintiff should bring proper suit under provisions of section 33 of the MRC Act since the suit filed by it under section 41 of the PSCC Act is clearly barred.

19 After considering overall conspectus of the case, in my view, the Small Causes Court had rightly rejected Plaint under Order VII Rule 11(d) of the Code and the Appellate Bench has committed an error in reversing the decision of the Small Causes Court. The impugned order passed by the Appellate Bench is thus indefensible and is liable to be set aside.

20 The Civil Revision Application accordingly succeeds. Order dated 14 February 2024 passed by the Appellate Bench of Small Causes Court is set aside and order dated 12 October 2022 passed by the Small Causes Court on application at Exhibit-31 is confirmed.

21 With the above directions, the Civil Revision Application is allowed with no orders as to costs.

**(SANDEEP V. MARNE, J.)**

22 After the judgment is pronounced, the learned counsel appearing for the Respondent seeks stay of the judgment. The request is opposed by the learned counsel appearing for the Applicants. Considering the fact that staying the judgment would result in restoration of the suit, I am not inclined to stay the judgment. The request for stay is accordingly rejected.

**(SANDEEP V. MARNE, J.)**

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