



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

WRIT PETITION NO. 4198 OF 2024

Vijay s/o Madhukar Kesari,
Age : 64 years, Occu : Medical Practitioner,
R/o 5603, Delhi Gate, Ahmednagar

..... PETITIONER
(Ori. Defendant)

VERSUS

Sagar s/o Madhukar Gunjal,
Age : 53 years, Occu: Legal Practitioner,
R/o House no. 19A, Janak, Shinde Mala,
Savedi, Ahmednagar.

..... RESPONDENT
(Ori. Plaintiff)

Mr. S. V. Dixit, Advocate for Petitioner
Mr. A. M. Gholap, Advocate for Respondent

CORAM : R. M. JOSHI, J.
RESERVED ON : 05th February, 2025
PRONOUNCED ON : 17th February, 2025

JUDGMENT :-

1. This petition takes exception to the impugned order passed below Exhibit 65 by the Trial Court in Regular Civil Suit No. 296/2018 whereby the primary issue with regard to the jurisdiction of the Court to entertain the suit came to be decided in affirmative. The petitioner/original defendant being aggrieved by the said judgment has preferred this petition.

2. For the sake of convenience parties are referred to as "Plaintiff" and "Defendant".

3. The facts which are necessary for the proper consideration of the issue involved in this petition are narrated in brief as under :-

Plaintiff is an Advocate by profession. His father also was pursuing legal profession. The suit premise was let out to him by the defendant for the purpose of conducting his profession as an Advocate. After death of father, plaintiff requested the defendant to accept him as a tenant. Defendant did not accept plaintiff as a tenant. Plaintiff, therefore, filed suit bearing Regular Civil Suit No. 296/2018 for declaration that the tenant in respect of the suit property.

4. Defendant filed written statement. He raised preliminary issue with regard to the maintainability of the suit. Trial Court framed issue about the maintainability of the suit by order dated 15.09.2022. This order came to be challenged by plaintiff in Writ Petition No.11212/2022 unsuccessfully. Pursuant thereto parties were permitted to lead evidence before the Trial Court on the preliminary issue. By impugned order, learned Trial Court accepted the contention of the plaintiff about maintainability of the suit.

5. Learned counsel for the petitioner-defendant submits that the Trial Court has committed error in not considering the provisions of Maharashtra Rent Control Act, 1999 (for short "**the Act of 1999**") in proper perspective. It is his submission that after enactment of

Maharashtra Rent Control Act, the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "**the Act of 1947**") ceased to have application. It is his further submission that the definition of premise has been modified considerably with a specific intention that the premises let out for any profession is excluded. It is his submission that the Hon'ble Supreme Court in various judgments has held that the profession of a Lawyer is not a business. It is his submission that the reliance placed by the learned counsel for the respondent/plaintiff on the judgment in case of **S. Mohan Lal vs. R. Kondiah 1979 AIR 1132** has no application to the present case as the same has been passed in respect of a proceedings in Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. He placed reliance on the judgment of Co-ordinate bench of this Court in case of **Savitribai Vishnupati Vaske and others Vs. Faruk Abdulrahim Patel and others (2010) 5 Mah LJ 357** in order to submit that as per Section 58 of the Act of 1999, the status of a tenant under the Act of 1947 comes to an end and as such there was no relationship of landlord and tenant between the plaintiff and defendant therein. According to him, this judgment is passed in the context of the issue in respect of an open land. By relying upon bill VI of 1993, it is his submission that there is conscious exclusion of premises let out to the Advocates/Legal Professionals. It is his submission that deletion of Section 5(8A) from the

Act of 1947, is sufficient to hold that one provision of the Act of 1999 would not apply to the present case.

6. Per contra learned counsel for the plaintiff supported the impugned order by contending that at this stage the merit of the claim of rival parties could not have been gone into by the Trial Court and it was only to see as to whether the suit is maintainable. It is his submission that the suit is filed for seeking declaration under Section 34 of the Specific Relief Act and it is only the Civil Court which is competent to issue any declaration. It is his submission that owing to Section 2 of the Act of 1999, the premises which was covered by the Act of 1947 continues to have application of the provisions of the present act. It is his submission that in view of the undisputed facts that the father of plaintiff was a lawyer and was permitted to conduct his legal profession from the suit premise and the plaintiff also being a Lawyer, is entitled to succeed the said tenancy from his father. To support his submission that the legal profession is a business in the context of the Rent Act, he placed reliance on the judgment of Hon'ble Supreme Court in case of **S. Monhan Lal (cited supra)**.

7. In the instant case, Trial Court framed and decided following preliminary issue :-

“Whether this Court is having jurisdiction to try and entertain

suit in present form.

8. The Courts have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. There is no challenge to the territorial or subject matter jurisdiction of the Court to entertain the suit for declaration. The objection of the defendant is about right of plaintiff to get such declaration in view of the provisions of the Act of 1999.”

9. There is no dispute about the fact that plaintiff is an Advocate and his father late Madhukar was also an Advocate by profession. Defendant is the owner of the suit premise and the said premise was let out to late Madhukar on rent of Rs. 50/- plus Electricity charges to pursue profession as a Lawyer. Plaintiff claims to succeed the said tenancy being legal heir and successor of deceased Madhukar. Since, defendant did not acknowledge him as a tenant, suit came to be filed for seeking declaration that plaintiff be declared as a tenant of the premise in capacity of legal heir of original tenant in respect of the suit property. The defendant filed written statement denying the contentions of the plaintiff and also raised issue of non-joinder of other LR's of Madhukar. It is denied that the plaintiff has any legal right to claim tenancy under the provisions of Maharashtra Rent Control Act. On the basis of application moved by the defendant vide Exhibit 65, learned Trial Court passed order

dated 15.09.2022 framing preliminary issue with regard to the maintainability of the suit. This order came to be upheld in Writ Petition No. 11212/2022. The parties, therefore, agitated the said issue before the Trial Court and the Trial Court decided the same in favour of plaintiff.

10. Though, defendant has sought to raise issue of maintainability of the suit, nothing was brought on record to indicate that the jurisdiction of Civil Court to entertain the suit is barred by law expressly or even by implication. The question raised by the defendant is that the plaintiff is not and cannot become a tenant of the suit property. While appreciating the issue of maintainability raised, there has to be drawn a distinction between these two issues i.e., about the maintainability of the suit and entitlement of the plaintiff to seek such relief. The issue of the entitlement of plaintiff cannot be decided at this stage and which would be subject matter of the decision of the Trial Court at the final decision. Suffice it to say that wherever there is no expressed or implied bar created by any provisions of law prohibiting Civil Court to give declaration as sought by the plaintiff, it has to be held that the suit is maintainable.

11. In considered view of this Court, reference made to the judgment in case of Savitribai (cited supra) is misplaced at this stage of proceeding. Perusal of the said judgment shows that the issue before this

Court was as to application of the provisions of the Act of 1999 to the open land. In the instant case, the question before the Trial Court is as to whether the plaintiff can be considered as a "tenant" in respect of the suit property. Section 7(9) of the Act of 1999 defines "premises" which means any building or part of a building let or given on license separately (other than a farm building) including the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building it also indicates any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. There is no dispute about the fact that suit premises is a building within the meaning of premises as defined therein.

12. Section 7(15) defines "tenant" which means any person by whom or on whose account rent is payable for any premises and includes such a person who is a tenant, deemed tenant, sub-tenant permitted under a contract or with permission/consent of the landlord or has derived title under a tenant. Clause "d" of the said definition indicates that :-

- d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member or the tenant's family, who, -*
 - i) where they are let for residence, is residing, or*
 - ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,*

with the tenant at the time of his death, or, in the absence of such member, any heir of deceased tenant.

13. Learned counsel for the petitioner had relied upon definition of "premises" under the Act of 1947 more particularly clause 8A thereof in order to contain that in the provisions Act, the premises let included for the purpose of practicing any profession or carrying on any occupation therein. In the Act of 1999, definition of the premises does not indicate the purpose of use thereof however definition of tenant in clause "d" indicates that the tenancy is transferable after the death of tenant where the premise is let out for education, business, trade or storage. A bare perusal of these provisions, therefore, indicate that issue which would fall for consideration before the Trial Court is as to whether the term "business" as referred therein includes profession of a lawyer. Needless to reiterate that this issue cannot be decided as preliminary issue.

14. Though, this Court does not wish to go into the issue of the merits sought to be raised by the parties, since the same is subjected to the decision of Trial Court, suffice it to say that *prima facie* there is judgment of Hon'ble Supreme Court may be in respect of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, however, it is

held therein that the business is a word of wide import capable of variety meaning and the practice of law is a business within the meaning of expression in Section 10(3)(a)(iii). Thus, the issues sought to be canvassed by both sides are required to be decided at the time of final decisions of the suit.

15. In order to cause interference in the impugned order, the petitioner was required to show perversity therein. For want of any perversity, this Court finds no reason to cause any interference therein in exercise of writ jurisdiction. Hence, petition is dismissed.

16. The observation made herein above are limited strictly to the decision of this petition and the Trial Court is not bound by the same. Trial Court to decide the suit in accordance with law, without getting influenced by any observation made herein above.

(R. M. JOSHI, J.)

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