



Judgment

370 cra53.21

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO.53 OF 2021

Hindustan Petroleum Corporation
Ltd., having registered office
Petroleum House, 17, Jamsheji Tata
Road, Mumbai-400020. **Applicant.**

:: V E R S U S ::

1. Shivji s/o Gangadas Patel, aged
about 59 years, occupation business,
r/o Mangalwaripeth, Umrer, tahsil
Umrer, district Nagpur.

2. Prakash s/o Natthuji Dewadkar,
aged about 63 years, business,
r/o Navegaon (Sahu), Umrer,
district Nagpur.

3. Pranay s/o Shravanji Parate, aged
about 56 years, r/o Pranjali, plot
No.262-D, Near Water Tank,
Laxminagar, Nagpur-440022. **Non-applicants.**

Shri V.V.Bhangde, Counsel for the Applicant.
Shri Dilip C.Daga, Counsel for Non-applicant No.3.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/02/2025
PRONOUNCED ON : 06/03/2025

JUDGMENT

1. Heard learned counsel Shri V.V.Bhangde for the applicant and learned counsel Shri Dilip C.Daga for non-applicant No.3.

2. By this civil revision application, the applicant has challenged order dated 6.3.2021 passed below Exh.15 by learned 19th Civil Judge Senior Division, Nagpur in Special Civil Suit No.926/2018 whereby the application filed by the applicant/defendant No.2 under Order VII Rule 11(d) of the Code of Civil Procedure was rejected.

3. The non-applicant Nos.1 and 2, who are landlords, filed suit bearing Special Civil Suit No.926/2018 for possession and recovery of rent on the contention that they are joint owners of the land admeasuring 115x200 total 23000 square feet bearing plot N.2/3 A, Khasra No.2/3 in Patwari Halka No.35 of Mauja Gohni (Sim),

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Gram Panchayat Bahadurpura, Umrer Road, Nagpur and house admeasuring 100 square feet constructed on the said land. The said suit premises was given on monthly lease to the defendant No.1 for a period of 29 years commencing from 24.1.2000 in view of Registered Lease Deed dated 24.1.2000 for running retail outlet/petrol pump and petroleum products. As per the Lease Agreement, the tenancy month commences on 1st day of each month and ends accordingly on the last day of each month as per the English Calendar. The agreed rent of the suit premises payable by the defendant Nos.1 and 2 is Rs.1500/- per month upto December 2015. From January 2016, the agreed rent was increased to Rs.41,667/- per month. Defendant No.1, in terms of the said Lease Deed dated 24.1.2000, has sublet the suit premises to the defendant No.2 vide Lease Deed dated 27.7.2000 executed between the defendant Nos.1 and 2.

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defendant No.1 failed to tender and pay the rent of the suit premises and, therefore, a Notice was issued thorough an Advocate on 13.6.2017 claiming arrears of rent. The defendant No.1 replied the Notice and denied arrears of rent and failed to pay the amount of rent. As defendant No.1 failed pay the amount of rent as agreed, another Notices were issued on 21.5.2018 and 1.10.2018. By the Notice dated 1.10.2018, the defendants were asked to evict the premises and to deliver the suit premises to the plaintiff. The said suit was filed by the plaintiff before learned CJSD at Nagpur.

4. After receipt of the suit summons, defendant No.2 filed an application under Order VII Rule 11(d) of the CPC for rejection of the plaint on the ground that the entire plaint shows that there exists landlord-tenant relationship between the plaintiff and the defendants. As defendant No.1 failed to pay the rent, the plaintiff was

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constrained to file the suit for eviction. From the contents of the plaint, the suit is not maintainable before learned CJSD, but it is required to be filed before the Small Causes Court in view of Section 16 read with 26 of the The Provincial Small Cause Courts Act, 1887. The said application is opposed by the plaintiff on the ground that the suit property is situated out of the Nagpur Municipal Corporation and the same falls under the jurisdiction Mauja Gohni (Sim), Gram Panchayat Bahadurpura, Umrer Road, Nagpur and, therefore, the application deserves to be rejected.

5. After hearing both the sides, learned CJSD, Nagpur rejected the application. Being aggrieved and dissatisfied with the same, the present revision is filed by the defendant No.2 on the ground that plaintiffs who are landlords filed the suit for eviction and vacant suit premises and recovery of rent. In view of clear language

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of Section 2(2) read with 33 of The Maharashtra Rent Control Act, 1999, the suit is maintainable before the Small Causes Court.

6. Learned counsel for the applicant submitted that the suit in question is required to be filed before the Small Causes Court in view of Section 16 read with 26 of the The Provincial Small Cause Courts Act, 1887. The plaintiff entered into the case with the defendants on 24.1.2000 and on that date The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was in force. Under Chapter I, Section 1(2) of the Rent Control Order, it has been stated that the rent control order shall extend to such areas as the State Government may, from time time, by notification direct. Chapter VII of the Maharashtra Rent Control defines jurisdiction of court. By exercising the powers conferred by Section 2 of The Central Provinces and Berar Regulation of Letting of

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Accommodation Act, 1946, the Rent Control Order, 1949 was applicable to all the Gram Panchayats. Section 33 of The Maharashtra Rent Control Act, 1999 explains jurisdiction of the court which starts with *non obstante* clause. A *non obstante* clause is a legislative device which is usually employed to give overriding effect to certain provision over some contrary provision. Section 2 of the Maharashtra Rent Act states about the application and defines that the act shall apply to premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II. Sub section (2) of the said Section states it shall apply to the premises or, as the case may be, houses let out in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation

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of Letting of Accommodation Act, 1946 and Hyderabad Houses(Rent, Eviction and Lease) Control Act, 1954 were extended and applied before the date of commencement of this Act and such premises or houses continue to be so let on that date in such areas which are specified in Schedule I to this Act, notwithstanding that the area ceases to be of the description therein specified. He further submitted that perusal of the provisions would show that prior to coming of The Maharashtra Rent Control Act, 1999, whenever The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was extended and applicable, The Maharashtra Rent Control Act, 1999 would apply in respect of the fact that the said area is not described in Schedule I of The Maharashtra Rent Control Act, 1999. He submitted that despite of Schedule I wherein only Nagpur Municipal Corporation has been specified but prior to coming of The

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Maharashtra Rent Control Act, 1999, The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was applicable to the suit property. On enactment of The Maharashtra Rent Control Act, 1999 w.e.f. 31.3.2000 the same is made applicable to the suit property and therefore in view of Section 2(2) read with section 33 of the Act, it is only the Small Causes Court that will have jurisdiction to decide the present dispute between the parties. Therefore, the order passed by learned CJSD is illegal and liable to be quashed and set aside.

7. Despite the service of the Notice, original plaintiffs Nos.1 and 2 remained absent. The non-applicant No.3 supported the contention of the defendant No.2 who is applicant in the present revision application.

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8. After hearing both the sides and perusing averments in the plaint, it reveals that relationship between the plaintiffs and the defendants is landlord and tenant. The suit is filed by the plaintiffs for eviction on the ground of arrears of the rent and also for the *mesne* profit. Section 16 of The Provincial Small Cause Courts Act, 1887 deals with exclusive jurisdiction of Courts of Small Causes, which reads as follows:

16. Exclusive jurisdiction of Courts of Small Causes. - Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

9. Section 26 of The Provincial Small Cause Courts Act, 1887 deals with suits or proceedings between the

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licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes to lie in court of small causes.-

(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 the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges therefor, irrespective of the value of the subject-matter of such suits 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

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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 Provincial Municipal Corporations Act, 1949, or the Maharashtra Housing and Area Development Act, 1976, or any other law for the time being in force, apply.

10. These two Sections, if read with Section 33 of The Maharashtra Rent Control Act, 1999, which defines jurisdiction of the courts, which is reproduced for the reference:

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,-

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(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

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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

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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.

11. Thus, the provisions of Section 33 of The Maharashtra Rent Control Act, 1999 and Section 26 of The Provincial Small Cause Courts Act, 1887 need to be read together. A bare reading of the Section would make it clear that the powers to exercise the jurisdiction under The Maharashtra Rent Control Act, 1999 are vested in Small Causes Court, it in fact, becomes tribunal under of The Maharashtra Rent Control Act, 1999. While dealing with suit under the Maharashtra Rent Act, it does not function as Small Causes Court but function as court constituted under that act i.e. Maharashtra Rent Act. The provisions of Section 26 of The Provincial Small Cause

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Courts Act, 1887 make it more clear and leave no manner of doubt.

12. Thus, sub-section (2) of Section 26 of The Provincial Small Cause Courts Act, 1887, clearly shows that when the suit is initiated under the provisions, it would lie before small causes court.

13. Admittedly, Section 33 of The Maharashtra Rent Control Act, 1999, starts with *non obstante* clause which gives overriding effect to certain provision over some contrary provision. Section 2 of the Maharashtra Rent Act specifically states about the application and defines that the act shall apply to premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II. Sub section (2) of Section 2 of The Maharashtra Rent Control Act, 1999 has *non obstante* clause which states that

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notwithstanding anything contained in sub-section (1), it shall apply to the premises or, as the case may be, houses let out in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 and Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 were extended and applied before the date of commencement of this Act and such premises or houses continue to be so let on that date in such areas which are specified in Schedule I to this Act, notwithstanding that the area ceases to be of the description therein specified.

14. Thus, perusal of the provisions of Section 33 of The Maharashtra Rent Control Act, 1999 shows that prior to coming of The Maharashtra Rent Control Act, 1999, whenever The Central Provinces and Berar Letting of

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Houses and Rent Control Order, 1949 was extended and applicable, The Maharashtra Rent Control Act, 1999 would apply in respect of the fact that the said area is not described in Schedule I of The Maharashtra Rent Control Act, 1999. In view of sub section (2) of Section 2 of the read with 33 of The Maharashtra Rent Control Act, 1999, it is only Small Causes Court that would have jurisdiction to decide the present dispute irrespective of the monetary claim. In view of the fact that prior to coming of The Maharashtra Rent Control Act, 1999, The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was applicable to the suit property and on enactment of The Maharashtra Rent Control Act, 1999 w.e.f. 31.3.2000 the same would apply to the suit property.

15. The Notification under the The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949

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issued also states that the provincial government was pleased to direct that Chapters of The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 specified in column No.2 of the table below shall extend to the areas specified in the corresponding entry in column No.3 of the table which is reproduced for reference:

Sl No.	Chapter	Area
(1)	(2)	(3)
1	1	The whole of the Central Provinces and Berar and the States integrated with the Central Provinces and Berar.
2	II and III	(a) All the Municipalities in the Central Provinces and Berar and the States integrated with the Central Provinces and Berar.
		(b) Gram Panchayat, Mahasamund, Gaurella Sanitation Panchayat Area, Bemetara, Sarkanda, Tgarbahar, Sirgitti, Torwa and Baloda, Bazar.
3	III	Municipaliities of Nagpur Wardha, Akola Chanda. Amraoti, Amraoti Camp Elltehpur, Hinganghat, Gondia, Morshi, Daryapur.
4	III and IV	Towns of Sukanda, Tarbahar, Sirgitti and Torwa.

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16. Thus, reading of averments in the plaint as well as perusal of the documents on record shows that the suit premises was let out on monthly rent. Prior to the application of The Maharashtra Rent Control Act, 1999, The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was applicable to the suit property. In view of Section 2(2) read with Section 33 of The Maharashtra Rent Control Act, 1999, it is only Small Causes Court that will have jurisdiction to decide the present dispute between the parties. Section 16 of The Provincial Small Cause Courts Act, 1887 restricts jurisdiction of the Small Causes Court, but Section 2(2) of The Maharashtra Rent Control Act, 1999 states with *non obstante* clause and in view of *non obstante* clause, said Section 16 will have to consider in view of Sections 2(2) and 33 of The Maharashtra Rent Control Act, 1999.

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17. Thus, bare reading of Sections above would make it clear that the power to exercise the jurisdiction under The Maharashtra Rent Control Act, 1999 is vested with the Small Causes Court on conjoint reading of Section 33 The Maharashtra Rent Control Act, 1999 and Section 26 of The Provincial Small Cause Courts Act, 1887.

18. Under Order VII Rule 11 of the CPC, duty is caste on the court to determine whether plaintiff discloses by scrutinizing the averments in the plaint. The law cannot permit clever drafting which creates cause of action showing the jurisdiction of the court. There is no dispute as to the fact that Order VII Rule 11 of the CPC is only as to the plaint averments and documents annexed with the plaint can be looked into whether requirements of the CPC are satisfied. By applying this principle and relying upon the plaint averments, it reveals that only the Small Causes Court is having the jurisdiction to entertain the

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suit and, therefore, the case of the defendants is covered under Order VII Rule 11(d) of the CPC which shows that suit is barred before the civil court.

19. At this stage, the issues or merits of the matter is not required to be looked into. What is required to be seen is, pleading of the plaint and on reading of the pleading it appears that there is a ground that the suit is filed in court which has no jurisdiction and such argument is substantiated. As such the plaint is to be rejected under Order VII Rule 11 of the CPC.

20. In this view of the matter, I proceed to pass following order:

ORDER

(1) The Civil Revision Application is **allowed**.

(2) The order dated 6.3.2021 passed below Exh.15 by learned 19th Civil Judge Senior Division, Nagpur in

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Special Civil Suit No.926/2018 is hereby quashed and set aside.

(3) The application filed below Exh.15 by the defendant No.2 for rejection of the plaint is **allowed**.

(4) Accordingly, the plaint of the plaintiff is **rejected**.

Civil Revision Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!