



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

WRIT PETITION NO. 438 OF 2024

- 1) Ganesh Vinayak Mudliyar,
Aged about 48 years, Occu. - Service,
- 2) Vyankatesh Vinayak Mudliyar,
Aged about 41 years, Occu. - Business,
Both R/o. Dargah Galli,
Near Seema Fruits, Shraogi Plot,
Akola, Tq. and Dist. – Akola.

.... **PETITIONERS**

// **VERSUS** //

Anilkumar Jagannath Pancholi,
Aged – Major, Occu.- Legal Practitioner,
R/o. Dargah Galli, Near Seema Fruits,
Shraogi Plot, Akola,
Tq. and Dist. – Akola.

.... **RESPONDENT**

Mr. V. B. Bhise, Advocate for the Petitioners.
Mr. P. Deshpande, Advocate along with Mr. N. Parwani, Advocate
for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON : JANUARY 17, 2025.

JUDGMENT PRONOUNCED ON : JANUARY 30, 2025.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing
for the parties.

3. Petitioners are challenging the impugned order dated 22.11.2023 passed by the Principal District Judge, Akola whereby Civil Miscellaneous application No. 336/2023 filed by the petitioners under Section 24 of the Civil Procedure Code (C.P.C.) for transferring and deciding the suit namely Regular Civil Suit No.283/2022 pending before 5th Joint Civil Judge, Junior Division, Akola to the Court of 6th Joint Civil Judge, Senior Division, Akola, where the Small Cause Suit No. 07/2022 filed by the respondent is pending came to be rejected.

4. Plaintiff's case can be summarized as under:-

Petitioners have filed a Regular Civil Suit No.283/2022 against the respondent before the learned Civil Judge, Senior Division, Akola. It is the case of the petitioners that the petitioners are the tenant and respondent is the landlord of the suit property. Originally the suit property was owned by one Mr. Satish Shivpal Singhania, however, later the suit property was purchased by respondent. Thereafter, an agreement was executed between petitioners and respondent on 16.07.2018. As per the said agreement, the petitioners became tenant of the suit property owned by respondent. As per the agreement, it was agreed by the petitioners to pay to the respondent an amount of Rs.1,000/- per month towards rent and the tenancy was agreed to commence from 1st of each English Calendar Month. It was also agreed

that Electricity Bill and Municipal Taxes will be paid by the plaintiffs separately. Accordingly, from the date of agreement, the petitioner No.1 started paying the rent amount to the respondent. Petitioners regularly by cheques to the defendant of the agreed amount. So also the electricity bill and municipal taxes has been regularly paid by the petitioners. The original municipal tax paid receipts are regularly handed over to the respondent.

5. On 06.08.2021, the respondent issued a notice to the petitioners claiming an amount of Rs.43,000/- from the petitioners. It is falsely alleged in the said notice that petitioners are in arrears of payment of rent amount since 01.10.2018 till 31.08.2021, an amount of Rs.35,000/- is recoverable from the petitioners. The respondent also claimed interest on the alleged amount of Rs.35,000/-. The petitioners had regularly issued the cheques to the respondent, but the respondent had not presented the cheques and making false claims against the petitioners. Hence, the petitioners also issued a reply notice on 16.08.2021. However, the petitioners recalculated the entire dues and issued a cheque to the defendant but the defendant returned the same and threatened the petitioners to forcibly dispose them off the suit property. Thus, petitioners have filed a Regular Civil Suit No.283/2022 before the Hon'ble Civil Judge, Senior Division, Akola.

6. The respondent, in response to the above, thereafter filed a Small Cause Civil Suit No.07/2022 before the learned Civil Judge, Senior Division, Akola for eviction, possession, arrears of rent and mense profit. The respondent in this Small Cause Civil Suit submitted details of the outstanding and due amount of arrears of rent, permitted increase and interest and stated that the petitioners have a huge amount due and when the respondent demanded the same, the petitioners resorted to sending notices and threatened the respondent of consequences upon which, the respondent filed a Small Cause Civil Suit.

7. The petitioners moved an application under Section 24 of the C.P.C. before the learned Principal District Judge, Akola to transfer the Regular Civil Suit No.283/2022 pending before the 5th Joint Civil Judge, Junior Division, Akola to the 6th Joint Civil Judge, Senior Division, Akola on the grounds that parties to both the suits were same and that the suit property in question was also same.

8. The respondent filed his reply and opposed the said application on the ground that cause of action is different and that a Small Cause Court does not have jurisdiction to entertain application pertaining to injunction.

9. The Principal District Judge, Akola by its order dated 22.11.2023 rejected the application filed by the petitioners, wherein it was observed that the Small Causes Court is certainly an exclusive jurisdiction and, therefore, the Small Cause Court cannot try and decide the suit for injunction. The aforesaid order is the subject matter of challenge in the present writ petition.

10. Learned Counsel for the petitioners contended that the learned District Judge erred in holding that Small Cause Court is an exclusive jurisdiction and that the Small Cause Court cannot try and decide the suit for injunction. It is necessary to point out here that there is no special Small Cause Court in Akola and henceforth the jurisdiction lies with the learned Civil Judge, Senior Division, Akola to try and entertain Small Cause Civil Suits and Darkhasts. Therefore, the learned Civil Judge, Senior Division, Akola having jurisdiction to entertain the suit for injunction as well as suit under Small Cause Court.

11. Learned Counsel for the petitioners further contended that the learned District Judge has also erred in not considering the crux involved in both the suits filed by the petitioners and respondent. It is necessary to state that the petitioners have filed a Regular Civil Suit for permanent injunction restraining the respondent from not evicting the

petitioners from the suit premises. The respondent later filed a Small Cause Civil Suit for eviction, possession, arrears of rent and mense profit. Thereafter, the result of both the suits depend upon each other which the learned Trial Court has failed to notice, which needs interference by this Court and also needs to be set aside.

12. Learned Counsel for the petitioners relied upon the following case laws :

- (i) ***Ek Nath vithal Ogale Vs. Mansukhlal Dhanraj Jain***, reported in ***1987 SCC OnLine Bom 414***,
- (ii) ***Mansukhlal Dhanraj Jain and Ors. Vs. Ek Nath Vithal Ogale, Vasdev Prakash Vs. Mrs. Vimla Premchand Hinduja & Ors.***, reported in ***AIR 1995 SC 1102*** and
- (iii) ***Subhash S. Joshi & Anr. Vs. Mohd. Sultan S/o. Abdul Gani & Anr.***, reported in ***2006(3) All MR 700***.

13. Learned Counsel for the respondent contended that the nature of both the suits, issues and controversy are totally different, this fact is rightly taken into consideration by the learned District Judge and rightly passed an appropriate order which needs to be confirmed. Hence prayed for the dismissal of the present writ petition.

14. Learned Counsel for the respondent relied upon the case of ***Dilip Murlidhar Lohiya Vs. Mohd. Azizul Haq Mohd. Abdul Haq***,

reported in *AIR 1990 Bombay 228*.

15. I have heard both the parties at length, perused impugned order. It appears that the transfer application is mainly rejected on the ground that Small Cause Court has no jurisdiction to entertain suit for injunction.

16. Relying on the judgment in *Dilip Murlidhar Lohiya (supra)*, the said application was rejected. However, in the said matter suit was filed by the plaintiff/landlord for eviction against his tenant/defendant before the Civil Judge empowered under the Provincial Small Cause Courts Act. The defendant wants to make out a counter-claim and to claim a permanent injunction restraining the plaintiff and others from creating any sort of obstruction in the user of the road by the defendant. This Court rejected the revision of the tenant holding that the Small Cause Court having exclusive jurisdiction to entertain the suits between landlord and tenant. The Court is not competent to entertain the suit or claim for injunction. The counter-claim has nothing to do with the main plaint.

17. As against this, learned Counsel for petitioners relied on *Eknath Vithal Ogale (supra)*, wherein it is held in paragraph No.12 as under:

“12. It was submitted that section 19(i) of the Presidency Small Cause Courts Act prescribes that Small Cause Court shall have no jurisdiction to entertain suits to obtain an injunction, and therefore suit for injunction simpliciter cannot be filed in that Court under section 41 of the Act. The submission cannot be accepted for more than one reason. Section 41 opens with the words "notwithstanding anything contained elsewhere in this Act" and therefore the suit relating to recovery of possession between licensor and the licensee, and even for an injunction can only be instituted in the Court of Small Causes in accordance with section 41 of the Act. Secondly, the Court which is entitled to entertain the suit can certainly pass consequential orders which may be necessary. The Division Bench in the case of Bombay Grain Dealers Association (supra) held that once a suit or proceeding falls within jurisdiction of a Court, then the Court is entitled to pass such consequential orders as are necessary for the effective enforcement of the rights declared or given by it. The Court of Small Causes therefore would have jurisdiction to grant relief of injunction in proper cases where the suit fell within its jurisdiction. The mere fact that the suit is for injunction simpliciter will not oust the jurisdiction of the Small Causes Court if the other conditions of exercise of jurisdiction are satisfied.”

18. Learner Counsel for petitioner also relied on ***Mansukhlal Dhanraj Jain and others (supra)***, wherein it is held as under:

“Section 41(1) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant licensor is threatening to illegally recover possession from the

Plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1). Therefore such suit could lie within the exclusive jurisdiction of Small Causes Court and the City Civil Court would have no jurisdiction to entertain such suits."

19. This Court in ***Subhash S. Joshi and another (supra)***, wherein similar facts are involved in the matter in paragraph No.9 as under:

"9. Plaintiff of present respondent No.1 before the Small Cause Court reveals that he is seeking declaration that action of defendants in not accepting rent from him in disconnecting his electric supply, harassing him by giving him threats and trying to dispossess him without due process of law is illegal. He is seeking permanent injunction restraining them from committing such acts and to accept rent from him and to issue receipt to him. He specifically averred that he is tenant occupying two rooms since 26/11/1991 on monthly Rent of Rs 650/- only. He has also given duration of tenancy month and how rent is to be paid. He has stated that present petitioners are owners and they are not issuing Rent receipts though they are accepting Rent. He has also described how they disconnected electric supply and it was restored after 64 days after police complaint. He has stated that from October 2002 they have stopped accepting monthly rent. The respondent No 1/plaintiff is running a computer centre in tenanted premises and the premises are within jurisdiction of Nagpur Small Cause Court. It is thus apparent that the dispute between parties is squarely covered under Section 26(1) of Act."

20. In view of the above facts, this Court held that the respondent/plaintiff is running Computer Centre in tenanted premises and the premises is within the jurisdiction of Nagpur Small Cause Court. It is thus apparent that the dispute between the parties is squarely covered under Section 26(1) of the Act in order of granting relief of injunction by the Small Cause Court is valid and was within competence of the Court.

21. In view of this position, the suit for injunction admittedly between landlord and tenant relating to tenancy is maintainable before the Small Cause Court, Akola and it is liable to be transferred to the Small Cause Court where already suit filed by the landlord bearing Small Cause Suit No.07/2022, is pending before the learned 6th Joint Civil Judge Senior Division, Akola. Accordingly, I proceed to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order passed by the learned Principal District Judge, Akola dated 22.11.2023 Exhibit-1, in Civil Misc. Application No.336/2023 is hereby quashed and set aside.
- (iii) The Regular Civil Suit No.283/2022 pending on the file of learned 5th Joint Civil Judge Senior Division, Akola is hereby

transferred to 6th Joint Civil Judge, Senior Division, Akola in Small Cause Court.

(iv) Learned Principal District Judge to facilitate the transfer the file to the concerned Court.

The Writ Petition stands disposed of in above terms. No orders as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak/R.S. Sahare