



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 388 OF 2024

1. Zenobia R Poonawala (Nee Ginwalla)
2. Rohinton Poonawala

...Applicants/
Ori.Def.1&2

Versus

1. Dr. Rustom Farhad Ginwalla
2. Dr. Naheed Ginwalla
3. Sushila Landge
4. Gracy Soares
5. Nazareth Soares
6. Neil Soares
7. Dhun Hodiwala
8. Gul Karanjia
9. Nadir Karanjia
10. Kiyanush Karanjia
11. Cherie Ginwalla

...Respondents/
Ori. Plaintiffs

WITH
INTERIM APPLICATION NO. 10681 OF 2024
IN
CIVIL REVISION APPLICATION NO. 388 OF 2024

Mr. Amrut Joshi, a/w Premlal Krishnan, Nadeem Sharma,
Hrishikesh Nadkarni and Yazad Udwadia, for the
Applicants.

Mr. Sameer Pandit, a/w Aastik Agarwal, i/b Wadia Ghandy &
Co., for Respondent No.1.

CORAM: N. J. JAMADAR, J.
Reserved On: 10th DECEMBER, 2025
Pronounced On: 24th MARCH, 2026

JUDGMENT:-

1. By this revision application the applicants, original defendant Nos.1 and 2, assail the legality and correctness of an order dated 29th May, 2024 passed by the learned Judge, City Civil Court, Greater Bombay, whereby the Notice of Motion No.1117/2023 in SC Suit No.2905/2022 for the rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), came to be dismissed.

2. Though there is a chequered history of multi-pronged litigation between the parties before the different forums, the background facts necessary for the determination of this revision application can be summarized as under:

2.1 For the sake of clarity and convenience, the parties are hereinafter referred to in the capacity in which they are arrayed in SC Suit No.2905/2022 before the City Civil Court.

2.2 Dr. Rustom Ginwalla (R1/P1) is the brother of applicant No.1/D1.

2.3 R11/P11 and Rashna Ginwalla are the sisters of P1 and D1. Applicant No.2/D2 is the husband of D1.

Rutton Manor, comprising ground plus four storey structure with terrace and two garages, and having 10 flats, situated at Garden Road, Apollo Reclamation, Colaba (“the suit building”) is at the heart of the controversy. Pervin Ginwalla, the late mother of P1 and D1 was the original lessee of the premises, over which Rutton Manor stands. After the demise of Pervin Ginwalla, it seems, disputes have arisen between the parties.

2.4 P1 claims, after Pervin’s demise, Farhad Ginwalla, the late father of P1, P11 and D1, became a co-owner of the suit building alongwith D1. Late Farhad had a 55% share and D1 had the rest 45% share therein.

2.5 The defendant No.1, on the other hand, contends, she is the sole surviving joint tenant of the head lessor, Mumbai Port Trust (“MbPT”) and undisputed sole landlord of the suit building.

2.6 In the wake of the disputes, D1 has filed a suit before the Court of Small Causes, Mumbai, for eviction of P1, from the three flats in the suit building. D1 had also instituted a civil suit, being SC Suit No.2927/2015, before the City Civil Court, Mumbai, seeking certain reliefs, qua P1 in relation to the suit building.

2.7 Late Farhad allegedly executed a duly stamped and registered Gift Deed dated 11th October, 2017, *inter alia*, transferring his 45% and 10% interest in the suit building, and the leasehold rights in the underlying land in favour of P1 and Rashna Ginwalla. Thus, P1 claims with effect from 11th October, 2017, P1 ceased to be a tenant of the flats in the suit building and became a co-owner of the suit building.

2.8 P1 and others instituted a suit, being Suit No.790/2018, before the High Court alleging harassment and nuisance by the applicants. Certain interim reliefs were granted in the said suit by a learned Single Judge. An appeal preferred by the D1 thereagainst came to be dismissed.

2.9 D1 also instituted a suit, being Suit No.405/2023, before the High Court against against P1 and others in respect of the suit building asserting, *inter alia*, that the tenancies in favour of P1, P11 and Rashna Ginwalla (D3 therein) were null and void-ab-initio, and P1, P11 and others were trespassers.

2.10 Asserting that the plaintiffs, including P1, are the occupants of the suit building and taking umbrage at alleged illegal conduct, nuisance, obstruction and other acts and omissions on the part of the defendants, the plaintiffs instituted

the instant suit i.e. Suit No.2905/2022 before the City Civil Court purportedly espousing their civil rights as occupants of the suit building.

2.11 The substance of the claim of the plaintiffs is that, in order to exert pressure upon the plaintiffs to give in to the unlawful demands of the defendants, the latter have resorted to various illegal acts including causing obstruction in the use of the lift, repairs and upkeep of the building and the common facilities and amenities. Alleging various acts of commission and omission, the plaintiffs have prayed for permanent injunction to restrain the defendants, their servants and agents from in any manner obstructing the use of the lift in the suit building by the plaintiffs, their family members, guest servants, agents and any person claiming under the plaintiffs; from obstructing the plaintiffs from installing CCTV cameras in or around the respective premises and in the suit building; from in any manner preventing the peaceful ingress and egress of the plaintiffs, their family members etc. to and from the suit building, from in any manner preventing the access, use and enjoyment of the common terrace and common areas of the suit building, and from in any manner obstructing the access to the

meter room, water tanks, lift room, pump room, etc. and repairs and maintenance thereof.

2.12 In the said suit, applicant No.1/D1 took out a Notice of Motion for rejection of the plaint, contending *inter alia* that the City Civil Court has no jurisdiction to entertain, try and decide the suit as the issues that arise for determination have their genesis in the relationship of landlord and tenant between the parties and, thus, the Court of Small Causes, at Mumbai has the exclusive subject matter jurisdiction. D1, in her capacity as the landlord, has instituted eviction suits before the Court of Small Causes against plaintiff Nos.1, 4, 7, 8, 9 and 10. Whereas plaintiff Nos.2, 3, 5, 6, 10 and 11 have no legal right to occupy the portions of the suit building. Thus, the suit, at the instance of plaintiff Nos.2, 3, 5, 6, 10 and 11, was not maintainable. Since the eviction suits are sub-judice before the Court of Small Causes at Mumbai, while deciding those suits, the Court of Small Causes can also pass consequential orders.

2.13 The respondents – plaintiffs resisted the Notice of Motion. The substance of the resistance was that the instant suit does not pertain to any tenancy rights nor it pertains to recovery of possession of the leased premises or rent thereof. On the

contrary, the instant suit essentially represents a tortious claim for nuisance and harassment at the hands of defendant Nos.1 and 2. Moreover, D1 has herself disowned the jural relationship of the landlord and tenant and, thus, the Civil Court has the plenary and residuary jurisdiction, to entertain, try and decide the suit.

2.14 After appraisal of the averments in the plaint, documents annexed thereto and the material on record and hearing the parties, the learned Judge, City Civil Court was persuaded to dismiss the Notice of Motion. It was observed *inter alia* that, D1 was *prima facie* putting hindrances in the utilization of the basic amenities by the occupants and, thus, the suit would not fall within the exclusive jurisdiction of the Court of Small Causes at Mumbai as the plaintiffs were not seeking the relief of injunction to protect their possession over the suit premises but asserting their rights as occupants and seeking relief to ensure uninterrupted use of the basic amenities. The conditions which were necessary for conferring exclusive jurisdiction on the Court of Small Causes were not fulfilled. Therefore, the Civil Court was not precluded from exercising the jurisdiction.

3. Being aggrieved, D1 and D2 have preferred this revision.

4. I have heard Mr. Amrut Joshi, the learned Counsel for the applicants – defendants, and Mr. Sameer Pandit, the learned Counsel for respondent No.1 – plaintiff, at some length. The learned Counsel for the parties, took the Court through the pleadings and material on record, including the orders passed by the Courts in the proceedings between the parties and the pleadings/affidavits of the parties in the other proceedings to demonstrate the position the parties have taken in regard to the jural relationship between the parties.

5. Mr. Joshi, the learned Counsel for the applicants, would submit that, incontrovertibly, the eviction suits instituted by D1 in the capacity of the landlady are pending before the Court of Small Causes against plaintiff Nos.1, 4, 7, 8, 9 and 10. The relationship of landlord and tenant between defendant No.1 and plaintiff Nos.1, 4, 7, 8, 9 and 10 can, thus, hardly be contested. Plaintiff No.3 is a maid servant. Plaintiff No.11 is a resident of USA.

6. Mr. Joshi would, thus, urge that in the face of almost admitted jural relationship between the parties, the suit of the present nature is expressly barred by the provisions contained in Section 33 of the Maharashtra Rent Control Act, 1999 (“the

Rent Act, 1999”), which confers exclusive jurisdiction in Brihan Mumbai on the Court of Small Causes, Mumbai, to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises and to decide any application under the said Act, and bars the jurisdiction of the other Courts to entertain any such suit proceeding or application or to deal with such claim or question.

7. Mr. Joshi would further urge that, the plaintiffs assertion that they are espousing their rights as occupants of the suit building is but an instance of clever drafting. The plaintiffs against whom the suits are sub-judice before the Court of Small Causes at Mumbai have deliberately suppressed the fact that eviction suits have been instituted against them before the Court of Small Causes.

8. In any event, Mr. Joshi would submit, even the claim of the plaintiffs that, they were deprived of the essential services and amenities and, therefore, they were seeking injunctive reliefs before the Civil Court also does not insulate the suit before the City Civil Court from the bar envisaged by Section 33 of the Rent Act, 1999. Laying emphasis on the provisions contained in Section 29 of the Rent Act, 1999, Mr. Joshi urged

that, even a dispute in regard to the withholding of essential supply or service is required to be agitated before the Court of Small Causes at Mumbai.

9. Mr. Joshi further submitted that, the plaintiffs have not only acknowledged the relationship of landlord and tenant but have also sought reliefs from the Court of Small Causes in the pending proceedings in the said capacity. Attention of the Court was invited to the written statement filed on behalf of plaintiff Nos.8 and 9 herein in RAE Suit No.714/2021, wherein categorical admissions are made regarding the jural relationship between the parties. In RAE Suit No.70/2015, plaintiff No.1 had sought permission to deposit rent. Reliance was also placed on the tenancy agreement executed by plaintiff No.4 and plaintiff No.7; who had also applied for the permission to deposit the rent in the Court of Small Causes. In the face of the aforesaid material, Mr. Joshi would urge that, the suit before the City Civil Court was expressly barred by the provisions contained in Section 33 of the Maharashtra Rent Control Act.

10. To buttress the aforesaid submission, as regards the general principles which govern the exercise of power to reject the plaint under the provisions of Order VII Rule 11, Mr. Joshi

placed reliance on a number of judgments including the decisions of the Supreme Court in the cases of *Popat and Kotecha Property vs. State Bank of India Staff Association*¹, *T. Arivandandam vs. T. V. Satyapal and another*², *Rajendra Bajoria others vs. Hemant Kumar Jalan and others*³ and a judgment of the learned Single Judge of this Court of *JVPD Sterling CHSL (Regd.) and others vs. Kamla Landmarc Builders and others*⁴.

11. To fortify the submission that, a party who does not approach the Court with clean hands and suppresses material facts to gain an advantage over the adversary, is not entitled to be heard at all, Mr. Joshi placed reliance on the judgment in the case of *S. P. Chengalvaraya Naidu vs. Jagannath (dead) by LRs.*⁵.

12. On the point of exclusive jurisdiction conferred on the Court of Small Causes under the provisions of Section 33 of the Rent Act, 1999, Mr. Joshi placed reliance on the judgment of the Supreme Court in the case of *Banatwala and Company vs. Life Insurance Corporation of India and another*⁶, wherein it was, inter alia, enunciated that an application for restoration of

1 (2005) 7 Supreme Court Cases 510.

2 (1977) 4 Supreme Court Cases 467

3 (2022) 12 Supreme Court Cases 641.

4 2019 SCC OnLine Bom 6792.

5 (1994) 1 SCC 1.

6 (2011) 13 Supreme Court Cases 446.

essential supplies and services when necessary shall be maintainable under the Rent Act, 1999, and a Division Bench judgment of this Court in the case of *Nirmal Ujwal Credit Co-operative Society Ltd. vs. Narendra Mohanlal Choudhary and another*⁷. In the latter case, it was enunciated that the provisions of Section 29 of the Rent Act, 1999 are in the nature of a Code in itself in the matter of any essential supply or services, and remedy has been provided thereunder to a tenant whenever such essential supply or service enjoyed by him is cut off or withheld.

13. On the aspect of the determination of the question of exclusive jurisdiction in the context of the provisions contained in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, reliance was placed on the judgment in the case of *Natraj Studios (P) Ltd. vs. Navrang Studios and another*⁸.

14. In contrast to this, Mr. Pandit, learned Counsel for the Respondent No.1, would submit that the bar of subject matter jurisdiction, sought to be pressed into service by the Applicants, is wholly misconceived, and, even non-existent in the

⁷ 2022 SCC OnLine Bom 1637.

⁸ (1981) 1 Supreme Court Cases 523.

contemplation of the Applicants as well. Mr. Pandit assiduously submitted that the instant suit raises a tortious claim of nuisance and harassment qua the Defendants, plain and simple. The plaint nowhere refers to the jural relationship of landlord and tenant between the parties. Neither the Plaintiffs seek to protect their possession over the respective portions of the suit building in their capacity as tenants, nor the suit relates to recovery of rent or any other matter covered by the provisions contained in Section 33 of the Maharashtra Rent Control Act, 1949.

15. Inviting attention of the Court to the averments in the plaint and the frame of the suit, Mr. Pandit submitted that, it is settled position in law that the jurisdiction is required to be initially determined on the basis of the averments in the plaint and not the defence raised by the Defendants. Support was sought to be drawn from the observations of the Supreme Court in the case of *Natraj Studios (P) Ltd. (supra)*, on which reliance was placed by Mr. Joshi.

16. To bolster up the submission that, the plaint in the present form does not set up the landlord tenant relationship and, therefore, the provisions contained in Section 33 of the

Maharashtra Rent Control Act, are not attracted, Mr. Pandit placed reliance on the judgment of the Supreme Court in the case of **Mansukhlal Dhanraj Jain and Ors. V/s. Eknath Vithal Ogale**⁹.

17. Mr. Pandit further submitted that, in the case at hand, the Defendant No.1 has not only categorically denied the tenancy of the Plaintiff No.1 and others, but has also instituted a suit before the High Court, being Civil Suit No.405 of 2023, asserting that those tenancies are null and void ab-initio. Plaintiff No.1 is alleged to be a trespasser and a decree for possession in respect of the properties in the possession of Plaintiff No.1 is sought. Therefore, the Defendant No.1 can not again turn around and contend that the City Civil Court's jurisdiction is barred and the Court of Small Causes has the exclusive jurisdiction. To this end, a very strong reliance was placed by Mr. Pandit on the decision of the Supreme Court in the case of **Abdulla Bin Ali and Ors. V/s. Calappa and Ors.**¹⁰.

18. In the facts of the case at hand, Mr. Pandit would urge, the Plaintiff No.1, post execution of the gift deed by late Farhad, has consistently asserted co-ownership over the subject building

9 (1995) 2 SCC 665

10 (1985) 2 SCC 54

since October 2017. Conversely, Defendant No.1 has not only challenged the said gift deed, but even questioned the tenancies granted by late Farhad in favour of Plaintiff No.1 and others, during Farhad's life time, as fraudulent. To add to this, on the own showing of Defendant No.1, Plaintiff Nos.2, 3, 5, 6 and 10 are not the tenants of the portions of the suit building in their respective occupation. Thus, no jural relationship of landlord and tenant exists between Defendant No.1 and Plaintiff Nos.2, 3, 5, 6 and 10. Consequently, it cannot be said that the rights sought to be espoused by those Plaintiffs in the capacity of the occupants of the suit building fall within the exclusive jurisdiction of the Court of Small Causes.

19. As a sequitur of the aforesaid submissions, Mr. Pandit would urge that, if a cause of action survives against even one of the Defendants or against some of the properties, then the suit must proceed for trial.

20. The question of bar of jurisdiction of the ordinary Civil Courts is often raised under Order VII Rule 11(d) of the Code, where the special enactment deals with the subject matter of the suit directly, collaterally or even remotely. The starting point of inquiry, however, firmly rests in a well ingrained principle

that the Civil Court has, in a sense, omnipresent and plenary jurisdiction to decide all suits of civil nature, unless their cognizance is expressly or impliedly bar. An inference of exclusion of the Civil Court's jurisdiction is not to be readily drawn. Where a bar of jurisdiction on account of conferment of exclusive jurisdiction on a Court / Tribunal under a special enactment, like, the Maharashtra Rent Control Act, 1999, is urged, the inquiry as to whether the subject matter of the lis before the Civil Court falls within the exclusive province of the jurisdiction of the Court/Tribunal created thereunder, becomes necessary.

21. Relevant part of Section 33 of the Act, 1999 reads as under :

“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 authorized 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.”

22. Section 41 of the Presidency of Small Causes Act, 1882 which also confers exclusive jurisdiction on the Court of Small Causes, reads as under :

“41. suits or proceedings between licensors and licensees 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 any 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 of 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.”

23. Evidently, both Section 33 of the Act, 1999 and Section 41 of the Act, 1882 begin with non-obstante clauses. Consequently, the jurisdiction of the other Courts, which they would otherwise have, would stand ousted if the conditions stipulated in Section 33 of the Act, 1999 read with Section 41 of the Act, 1882 are satisfied. On a plain reading of the aforesaid provisions, the following conditions need to be satisfied before the ouster of the jurisdiction of the ordinary civil court can be sustained:

(a) suit or proceeding must be between the landlord and the tenant or the licensor and the licensee, as the case may be;

(b) the suit or proceeding must relate to recovery of rent or possession of any premises; or

(c) suit or proceeding is in relation to any application made under the Maharashtra Rent Control Act, 1999.

If the aforesaid conditions are satisfied, the latter part of Section 33 precludes the other Courts from entertaining any such suit, proceeding or application or to deal with such claim or question.

24. In the case of **Mansukhlal Dhanraj Jain (supra)**, the Supreme Court expounded that the phrase ‘relating to recovery of possession’ as found in Section 41(1) of the Small Causes Courts Act, is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee – plaintiff would squarely be covered by the wide sweep of the said phrase. It was further enunciated that

the nature of the suits as contemplated by Section 41(1) of the Small Causes Courts Act, 1882 and Section 28 of the Bombay Rent Act, 1999, is the same, namely, it should be the suit relating to the recovery of possession of premises. Interpreting the phrase 'relating to recovery of possession' as found in Section 28 of the Bombay Rent Act, the Supreme Court in the case of **Babulal Bhuramal V/s. Nandram Shivram**¹¹ held that a suit for declaration that one of the Plaintiffs was the tenant of the defendant landlord and the other plaintiffs were his sub-tenants and they were entitled to be protected from eviction squarely falls within the exclusive jurisdiction of the Small Causes Court, Bombay under Section 28 of the Bombay Rent Act and jurisdiction of the City Civil Court for entertaining such a suit is excluded.

25. The propositions of law, as evincible from the phraseology of Section 33 of the Maharashtra Rent Control Act, 1999 read with Section 41 of the Small Causes Courts Act, are quite clear. The application of the aforesaid propositions to the concrete cases in myriad fact-situations, however, at times presents difficulties. The decision of the Supreme Court in the case of **Natraj Studios (P) Ltd.** (*supra*), illuminates the path. The

¹¹ AIR 1958 SC 677

approach to be adopted by the Courts in different situations where a party asserts or disputes the jural relationship of landlord and tenant was elucidated by the Supreme Court, as under :

“18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of exclusive jurisdiction or before the Court of ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny

the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary Civil Court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary Civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straightaway oust the jurisdiction of the ordinary Civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination-be it the Court of Small Causes or the ordinary Civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary Civil Court must cease to the extent its jurisdiction is ousted. (emphasis supplied)

26. The Supreme Court has enunciated in clear and explicit terms that the jurisdictional facts are necessarily to be decided

by the Court, where the jurisdictional question crops up for consideration and such question may arise for decision before the Court of exclusive jurisdiction, or the ordinary Civil Court. If the jurisdictional question is eventually decided in favour of the Court of exclusive jurisdiction, a suit or proceeding before the ordinary court must terminate to the extent its jurisdiction is ousted.

27. Applying these principles to the facts of the case at hand, first and foremost, since the Defendants are seeking rejection of the plaint on the ground of bar of jurisdiction, the plaint is required to be read as a whole in a meaningful and not formalistic manner. (*T. Arivandandam vs. T. V. Satyapal and another (supra)*). If an illusion of a cause of action is created or the exclusive jurisdiction of the Court of Small Causes is sought to be side-stepped by resorting to clever drafting, then it is the duty of the Court to nip such an effort in the bud.

28. If, on the aforesaid anvil, the tenor of the plaint is considered, it appears that the Plaintiffs have instituted the instant suit in the capacity of the occupants of the suit building. Plaintiff No.1 has nowhere asserted tenancy rights. In contrast, there is reference to the Plaintiff No.1's claim of

ownership. The allegations in the plaint revolve around the obstruction in the use of the lift, access to common terrace and resistance to activities aimed at repairs, upkeep of the building and maintenance of cleanliness and hygiene in the suit premises. The Plaintiffs thus seek injunctive reliefs to abate the alleged obstruction, annoyance and hindrances.

29. From the tenor of the plaint, it becomes abundantly clear that the suit nowhere involves the claim of either recovery of possession or protection of the possession of the Plaintiffs over the respective portions of the suit building as the occupants thereof, much less as tenants. Nor the suit relates to recovery of rent or charges.

30. The thrust of the submission of Mr. Joshi was that, the reliefs claimed in the suit fall within the ambit of the provisions contained in Section 29 of the Maharashtra Rent Control Act, 1999, which, in the first part, proscribes withholding of essential supply or services enjoyed by the tenant, and, in the second part, provides a remedy for the restoration of such supply or services. Such a claim, according to Mr. Joshi, would clearly fall within the exclusive jurisdiction of the Court of Small Causes as that would take shape of an application under the

provisions of the Rent Act, 1999. A very strong reliance was placed by Mr. Joshi on the judgments in the cases of *Banatwala and Company (supra)* and *Nirmal Ujwal Credit Co-operative Society Ltd. (supra)*.

31. In the case of **Nirmal Ujwal Credit Co-operative Society Ltd. (supra)**, a Division Bench of this Court was confronted with the question, whether a revision application under Section 34(4) of the Maharashtra Rent Control Act, 1999, would be maintainable against an order passed on an application under Section 29(2) of the said Act. Respondent No.1 therein, had initiated the proceedings with the contention that the action of the Appellant of withholding electricity supply to the lift and the premises let out to the tenant was unjust and without any sufficient cause. In that context, after advertng to the provisions contained in Section 29(2) of the Act, the Division Bench observed that the provisions of Section 29 are in the nature of a Code in itself in the matter of any essential supply or service. The same includes supply of water, electricity, lights in passages and staircases, lifts and conservancy or sanitary service. The provisions recognize the right of a tenant to enjoy essential supply and service of the aforesaid amenities which

are basic in nature which a tenant is entitled to enjoy in respect of the premises let to him. Remedy has also been provided to a tenant whenever such essential supply or service enjoyed by him is cut off or withheld.

32. In the case of **Banatwala and Company (supra)**, the Supreme Court considered the question of maintainability of an application before the Court of Small Causes, Mumbai, for restoration of the lift services under Section 29 of the said Act, where the premises in question was governed by the Public Premises (Eviction of the Unauthorized Occupants) Act, 1971. The Supreme Court held that, the public premises are not specifically exempted from the applicability of the MRC Act. That being so, there was no reason to hold that the remedies under Section 29 of the Rent Act, 1999 would not be available to the tenants of the public premises, though for the purposes of eviction of unauthorized occupants and recovery of arrears of rent, the proceedings will lie only under the Public Premises Act, 1971.

33. There can be no quarrel with the aforesaid propositions. However, the question of the jurisdiction of the City Civil Court does not hinge merely upon the nature of the relief claimed by

the Plaintiffs in the suit, even if some of the reliefs may partake the character of preservation and continuous availability / supply of the essential services. As enunciated in the case of **Mansukhlal Dhanraj Jain (supra)**, the primary requirement is that the suit or proceeding must be between the landlord and tenant or the licensee and the licensor. If this jural relationship is clearly demonstrated, then the nature of the reliefs claimed in the suit or proceeding becomes relevant.

34. In the case at hand, on the aspect of the jural relationship between the parties, by and large, there is no quarrel over the character of the few of the parties to the suit. Neither the Applicant No.2-Defendant No.2 claims to be a landlord, nor the Applicants asserted that the Respondent Nos. 2, 3, 5, 6 and 10-Plaintiff Nos. 2, 3, 5, 6 and 10 are the tenants. On the contrary, the applicants contend that they are illegal occupants. Consequently, the question of existence of jural relationship of landlord and tenant qua the aforesaid parties does not arise at all.

35. Secondly, from the perusal of the previous proceedings between the parties and the orders passed therein, it becomes explicitly clear that the Applicant No.1/Defendant No.1 has, in

the pleadings, disowned the relationship of landlord and tenant in regard to the few of other Plaintiffs, which was sought to be asserted in the instant Notice of Motion. In the Plaint in suit No. 405 of 2023 instituted by the Applicant No.1-Defendant No.1 before this Court, Defendant No.1 claimed that the tenancies allegedly created in favour of Plaintiff Nos. 1 and 11 were fraudulent and plaintiff No.1, 11 and Rashna (D3 therein) were the trespassers. Defendant No.1 had *inter alia* sought the reliefs that the tenancies in favour of plaintiff Nos.1 and 11, having been created by fraud and misrepresentation, were void ab-initio; the plaintiff Nos.1, 11 and Sushila Landge (P3 herein) were the trespassers and for delivery of vacant possession of the portions of the suit building in the occupation of the abovenumbered Plaintiffs and other Defendants therein.

36. In view of the aforesaid stand of the Defendant No.1, coupled with the assertions of the right by the Plaintiff No.1 as a co-owner of the suit building and the institution of the proceedings by Defendant No.1 as well as the Plaintiffs before the ordinary civil court, merely because the Defendant No.1 has instituted eviction suit before the Court of Small Causes for eviction of few of the Plaintiffs, the jurisdiction of the civil Court

cannot be said to be ousted. A party cannot be permitted to approbate and reprobate.

37. In the case of **Abdulla Bin Ali and Ors. (supra)**, on which reliance was placed by Mr. Pandit, the Supreme Court enunciated that, when the Defendants therein denied the title of the Plaintiffs and the tenancy, the Plaintiffs filed a suit treating them to be trespassers and the suit was not on the basis of relationship of landlord and tenant between the parties, and on the denial of the tenancy and the title of the Plaintiffs – Appellants, the latter filed a suit treating the Defendants therein to be trespassers and the suit against the trespassers would lie only in the Civil Court and not in the revenue Court. Thus, in the light of the denial of the tenancy by the Defendants, the suit was cognizable by the Civil Court.

38. In the case at hand, the Defendant No.1 has not only denied the tenancy of the Plaintiff No.1 and others, but instituted proceedings before the Civil Court seeking such declaration. Thus, it would be impermissible for the Defendants to take a somersault and seek rejection of the plaint on the ground that the suit of the present nature would fall within the exclusive jurisdiction of the Court of Small Causes, at Mumbai.

39. Though Mr.Pandit canvassed submissions premised on the applicability of the principle of res-judicata, in view of the orders passed by this Court in Suit No.790 of 2018 and Appeal No.437 of 2018 filed by the Defendants, challenging the interim order passed therein, yet, in the context of the limited nature of the inquiry, this Court refrains from delving deep into the said aspect of the matter. Suffice to note that, this Court has exercised jurisdiction as the ordinary civil Court in the context of the disputes over the use of the portions of the suit building and the alleged infringement of the privacy rights of the occupants of the suit building.

40. For the foregoing reasons, this Court does not find any justifiable reason to interfere with the order passed by the learned Judge, city Civil Court as there is neither any jurisdictional error, patent legal infirmity or material irregularity in the impugned order. Thus, the Civil Revision Application deserves to be dismissed.

41. Hence, the following order:

: O R D E R :

(i) Civil Revision Application stands dismissed.

(ii) In view of the dismissal of the Civil Revision Application, IA No.10681 of 2024 also stands disposed.

[N. J. JAMADAR, J.]