
(2007) 1 MhLj 362

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No's. 3003 and 3030 of 2006

Devidas Mohanlal
Gupta

APPELLANT

Vs

Ajesh Suresh Sarvaiyya

RESPONDENT

Date of Decision: Sept. 25, 2006

Acts Referred:

Bombay Civil Courts Act, 1869 â€” Section 28#Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€” Section 28, 29A, 49#Civil Procedure Code, 1908 (CPC) â€” Section 96(4)#Maharashtra Rent Control Act, 1999 â€” Section 16(1), 33, 33(1), 33(1)(b), 33(1)(c)#Provincial Small Cause Courts Act, 1887 â€” Section 15, 16, 25, 26, 32

Citation: (2007) 1 MhLj 362

Hon'ble Judges: B.P. Dharmadhikari, J

Bench: Single Bench

Advocate: P.Y. Deshpande, for the Appellant; V.M. Deshpande, for the Respondent

Final Decision: Dismissed

Judgement

B.P. Dharmadhikari, J.

Considering the nature of controversy, Rule is made returnable forthwith and both matters are heard finally at the

stage of admission itself. I have heard Advocate S/s P. Y. and S. P. Deshpande for petitioners/Tenants and Advocate V. M. Deshpande for

respondents Landlords. The orders impugned in both these petitions are identical and by said order, separate objections raised by present

petitioners that the suits filed by the respective landlords should be registered as Regular Civil Suits have been rejected by Second Joint Civil Judge

(Junior Division) Amravati on 21st March, 2006. There is no dispute about facts between parties and at one stage, Advocate V. M. Deshpande

for Landlords stated that he will not mind even if the petitions are allowed because the tenants are only trying to delay the suits. However

considering the arguments advanced and view of the lower Court in its order, I am considering the controversy on merits.

2. Respondents have instituted Small Cause Civil Suits No. 110 and 117 of 2004 on the file of Second Civil Judge, Junior Division Amravati for

recovery of possession against petitioners u/s 16(1)(c)(g)(k) and (n) of Maharashtra Rent Control Act, 1999, referred to as Rent Act, and for

damages. Tenants (all petitioners in both petitions) have filed their written statement in their respective suit. Thereafter, they moved identical

application on 23-1-2006 styled as application u/s 33(1)(c) of Rent Act and raised the objection that in view of provisions of section 33(1)(c)(2)

of Rent Act jurisdiction of all other Courts to take cognizance of such dispute is barred and further said Act containing special provisions and

procedure for filing of appeals and revisions. Hence section 25 or 26(A) of Provincial Small Cause Courts Act, [hereinafter referred to as

Provincial Act], have no application to these suits. They requested the Court therefore to register the suits as Regular Suits and to try the same

accordingly. The applications were opposed by Landlords and Court below after hearing both sides, was pleased to pass impugned order on 21st

March, 2006 rejecting the request and objection of petitioners. It found that the suit can be tried by Small Cause Court and also by it and there is

no discrimination made by Rent Act between the two forums. It therefore, dismissed the applications.

3. Advocate P. Y. Deshpande for tenants has contended that the view taken by Court below is erroneous. He has invited attention to provisions of

Rent Act, Provincial Act and also to Bombay Civil Courts Act, 1869 (hereinafter Civil Court Act) to contend that lower court i.e. Second Joint

Civil Judge, Junior Division was not Small Cause Court established under Provincial Act and it was invested with powers of small cause by High

Court u/s 28 of Civil Court Act and hence, procedure prescribed under Rent Act was only relevant. It was argued that there is difference in

procedure adopted by Small Cause Court and Court of Junior Division and hence tenant is put to prejudice. Attention is invited to judgment of this

Court reported at 2002(5) Mh.L.J. 415 = 2002(1) All MR 763, Vijaykumar Pathak vs. Madhukar Chitale, to state that as per law it is Court of

Junior Division alone which is competent to try the suit and procedure prescribed by statute cannot be bypassed. Reliance is also placed upon

Savitribai and Another Vs. Vithal Hari Petakar, , Ramkishore Pandit Vs. Vijayabhadursingh Jagtapsingh, , Babulal Bhuramal and Another Vs.

Nandram Shivram and Others, , Babulal vs. Nandram, 1970 Mh.L.J. 848, Khemchand vs. Mohammadbhai, 1987 Mh.L.J. 283, Salimkhan vs.

Mohammad and Mrs. Shantabai Yashwant Kothare and Others Vs. Shri Shankar (since through legal heirs and representatives Parshuram Naik

deceased, represented Smt. Prabhavati Shankar Naik, Parshuram Shankar Naik, Chandrakant Shankar Naik and Hemant Shankar Naik), .

4. Advocate V. M. Deshpande on the other hand argued that the very provisions on which petitioners are placing reliance clearly show that the

Court of Junior Division was exercising powers in view of provisions of Provincial Act and also Rent Act. The procedure prescribed under

Provincial Act was alone therefore applicable and the Court below has correctly appreciated the controversy. It is argued that the cases on which

reliance is sought to be placed consider altogether different situation and hence are not precedents relevant for this controversy. The reasoning

given by Court below is being justified by landlords.

It will be first necessary to note provisions of Rent Act.

33-(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, 1887, 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.

[47. Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Competent

Authority or the State Government or an officer authorised by it is empowered by or under this Act, to decide, and no injunction shall be granted

by any Court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority

or the State Government or such officer. """]

Advocate P. Y. Deshpande has made a distinction between Small Cause Court established under Provincial Act and the Court of Civil Judge

Junior Division in whom the powers of Small Cause Court are invested by virtue of section 28 of Civil Court Act. It is his argument that section 33

of Rent Act only contemplates Small Cause Court established under Provincial Act or Court of Civil Judge to whom District Judge transfers the

proceedings from such Small Causes Court. Before proceeding further, it would be appropriate to refer to relevant provisions of Provincial Act

and of Civil Court Act.

Section 5 of Provincial Act occurs in Chapter II which deals with constitution of Courts of Small Causes. Section 5 reads as under :

5. Establishment of Courts of Small Causes.- (1) The State Government may, by order in writing, establish a Court of Small Causes at any place

within the territories under its administration beyond the local limits for the time being of the Ordinary Original Civil Jurisdiction of a High Court of

Judicature established in a Presidency Town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as State Government may define, and the Court may be held at

such place or places within those limit as the State Government may appoint.

It is admitted position that State Government has not established Court of Small Causes at Amravati and High Court has invested the lower Court

with those powers in view of section 28 of Civil Court Act. Said section 28 reads as under:

28. Power to invest Civil Judges with small cause powers.- (1) The High Court may invest any Civil Judge with the jurisdiction of a Court of Small

Causes for the trial of suit cognizable by such Courts up to such amount as it may deem proper, not exceeding in case of a Civil Judge (Senior

Division) 3000 rupees and in case of a Civil Judge (Junior Division) 1500 Rs.

(2) A Civil Judge (Senior Division) or a Civil Judge (Junior Division), who is invested with the jurisdiction of a Court of Small Causes under sub-

section (1), shall continue to have such jurisdiction within the local limits of his ordinary jurisdiction so long and as often as he may fill the office of

Civil Judge (Senior Division) or Civil Judge (Junior Division), as the case may be, without reference to the District in which he may be employed.

(3) The High Court may, whenever it thinks fit, withdraw such jurisdiction from any Civil Judge so invested.

6. Question is whether any distinction between Court of Small Causes established under Provincial Act and the Court functioning because of

investing of such power u/s 28 of Civil Court Act is recognized by Rent Act. For that purpose, perusal of section 34 of Rent Act is essential. The

relevant portion of section 34 is as under :

34. Appeal.- (1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie :

(a).....not relevant as it deals with Birhan Mumbai.

(b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act,

1887, (IX of 1887) or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33

or by a Civil Judge exercising such jurisdiction, to the District Court;

It is therefore clear that if the decree or order is made by Court of Small Cause established under Provincial Act or by Court deemed to be Court

of Small Cause, appeal prescribed is to District Court. Even if such judgment on decree is passed by Civil Judge exercising such jurisdiction,

appeal prescribed is to District Court. The words ""exercising such jurisdiction"" clearly cover Civil Judges who exercise powers of Small Cause

Court in view of investment in them of those powers by High Court u/s 28 of Civil Court Act. Sub-section (4) of section 34 also confers revisional

powers upon District Court where no appeal lies. Section 37 of Rent Act stipulates that the Courts specified in sections 33 and 34 have to follow

the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. In view of

section 7 clause (11) which defines word ""prescribed"" and clause (13) which defines word ""rules"", it is apparent that insofar as procedure before

trial Court or Appellate Court or Revisional Court is concerned, the same is identical i.e. uniform. Thus, even if there is no Civil Judge with powers

invested in him u/s 28 of Civil Court Act, his order and decree receives same treatment as that of Small Cause Court established under Provincial

Act or deemed to be such Court u/s 33(2)(c) of Rent Act. Hence, when there is Civil Judge invested with powers of Small Cause, his order and

decree has not been treated differently by section 34(1)(b) of Rent Act. Section 33(2)(c) of Rent Act creates a deeming fiction even in relation to

transferee Court. It is therefore apparent that section 33(1) along in its clause (b) also cover Civil Judge invested with powers of Small Cause u/s

28 of Civil Court Act. This is fortified by sections 32 and 33 of Provincial Act which read as under :

32. Application of Act to Courts invested with jurisdiction of Court of Small Causes.- (I) So much of the Chapters III and IV as relates to :

(a) the nature of the suits cognizable by Courts of Small Causes.

(b) the exclusion of the jurisdiction of other Courts in those suits.

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act, applies to Courts invested by or under

any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those

Courts.

33. Application of Act and Code to Court so invested as to two Courts.- A Court invested with the jurisdiction of the Court of Small Causes with

respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a Civil nature which are not

cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

Chapter III of Provincial Act deals with jurisdiction of Court of Small Causes while chapter FV deals with Practice and Procedure of those

Courts. It is therefore apparent that Civil Judge (Junior Division) invested with jurisdiction of Small Cause u/s 28 of Civil Court Act by High Court

therefore becomes a Court of Small Cause for the purposes of Provincial Act though it is not established as such under that Act.

7. There is nothing in language of section 33 or 34 of Rent Act which militates with the above scheme of Provincial Act. Whenever a Court of

Small Cause is functioning in any area, either established under Provincial Act or because of investing of Small Cause Jurisdiction by High Court

under Civil Court Act, it is apparent that the suit or proceeding u/s 33 of Rent Act is to be filed before it. In view of section 32(1)(b) of Provincial

Act such Court excludes the jurisdiction of all other Courts in those suits and hence, such Courts invested with jurisdiction are Courts of Small

Causes established under the Provincial Act itself for the purposes of section 33(1)(b) of Rent Act. Section 33(1)(c) of Rent Act envisages the

case where Court of Small Cause whether established or invested with such powers, is not available. In the facts of present case, even if it is

presumed that after Rent Act, all Courts invested with jurisdiction of Small Cause by High Court have lost their status as such, still as both the suits

filed by respondents are before Civil Judge (Junior Division) which is also invested with Small Cause jurisdiction, it satisfies even the requirement of

section 33(1)(c). Procedure to be followed by all Courts functioning u/s 33 of Rent Act is as prescribed by rules framed under Rent Act. Hence,

mere categorization of these suits as Regular Civil Suits or Small Cause Suits is not relevant for the purposes of adjudication at all.

8. This brings me to the case law on which petitioners have placed reliance. 2002(5) Mh.L.J. 415 : 2002(1) All MR 763, Vijaykumar Pathak vs.

Madhukar Chitale, to state that as per law it is Court of Junior Division alone is competent to try the suit and procedure prescribed by statute

cannot be bypassed. The judgment considers provisions of section 28 of Bombay Rents, Hotel and Lodging House Rates Control Act which is

pari materia with section 33 of Rent Act. The execution proceedings were sent to Senior Division when Junior Division Civil Judge was available at

that place. The clause (b) of said section 28 contemplates jurisdiction with Junior Division whenever such Civil Judge Junior Division is available.

Observations in paragraph 8 which state that when statutory provision specifically prescribes the authority to deal with the matter, the

administrative exigencies cannot be an excuse to bypass the statutory provisions; are to be understood in this background. In present writ petitions,

it has not been demonstrated that Second Joint Civil Judge (Junior Division) at Amravati does not possess the small cause jurisdiction. The ruling

therefore has no application. Reliance is also placed upon Savitribai and Another Vs. Vithal Hari Petakar, , is again misconceived for same

reasons. The judgment considers section 28 of Bombay Rents, Hotel and Lodging House Rates Control Act but it does not consider the case

where powers u/s 28 of Civil Court Act are exercised by High Court to invest jurisdiction of Court of Small Cause with Civil Judge, Junior

Division. This judgment however makes reference to Civil Court Act for the purposes of interpreting section 28 of Bombay Rents, Hotel and

Lodging House Rates Control Act.

1993 Mh.L.J. 1812, Dinyar Irani vs. Kshirsagar, considers the situation in which tenant filed suit against owners/landlord apprehending forcible

dispossession. Case was filed in City Civil Court, Bombay which returned the plaint in view of remedy u/s 28 of Bombay Rents, Hotel and

Lodging House Rates Control Act. Discussion in paragraph 10 of report clearly shows that the controversy was covered by said section 28

because of wide interpretation given to words ""relating to"" appearing in it. The suit was there not filed before Court covered by section 28 of

Bombay Rents, Hotel and Lodging House Rates Control Act and hence, this ruling has no application here. Ramkishore Pandit Vs.

Vijayabhadursingh Jagtapsingh, , is again distinguishable for same reason as suit was filed by tenant before City Civil Court and not before Court

covered u/s 28 of Bombay Rents, Hotel and Lodging House Rates Control Act.

Babulal Bhuramal and Another Vs. Nandram Shivram and Others, , in fact considers the argument about conflict between sections 28 and 29A of

Bombay Rents, Hotel and Lodging House Rates Control Act. Section 29A permits a party to establish in competent Court his title to suit

premises. Hon"ble Apex Court has held that the provisions of section 28 of Bombay Rents, Hotel and Lodging House Rates Control Act clearly

indicate that all claims or questions arising out of the Act or any of its provisions, even though they may be in the nature of a title to the premises,

were to be decided by Courts specified in that section. Thus, the adjudication is not a precedent in this matter.

In 1970 Mh.L.J. 848, Khemchand vs. Mohammadbhai, Hon"ble Apex Court has held that section 28 of Bombay Rents, Hotel and Lodging

House Rates Control Act does not set up any new Courts to try suits or proceedings between landlord and tenants and it only invested existing

Courts with exclusive jurisdiction to try the suits and proceedings of the nature set out under the Act. The issue raised before Hon"ble Apex Court

was that the Court of Small Causes, Ahmedabad had no jurisdiction to pass an order issuing a distress warrant while trying proceedings under

Bombay Rents, Hotel and Lodging House Rates Control Act. Challenge was also to vires of Rule 5 framed u/s 49 thereof. Again the controversy

and the finding has got no bearing on present matters.

1987 Mh.L.J. 283, Salimkhan vs. Mohammad, declares the exclusive jurisdiction of Small Cause Court in landlord-tenant disputes and holds that

ceiling limit of Rs. 3000/- contained in section 96(4) of CPC would be applicable to other suits contemplated by sections 15 and 16 of Provincial

Act and not to suits u/s 26 thereof. The judgment is therefore not relevant here.

In Mrs. Shantabai Yashwant Kothare and Others Vs. Shri Shankar (since through legal heirs and representatives Parshuram Naik deceased,

represented Smt. Prabhavati Shankar Naik, Parshuram Shankar Naik, Chandrakant Shankar Naik and Hemant Shankar Naik), , the suit filed was

composite suit and plaintiff landlord sought ejectment and possession of tenanted premises as also encroached area before Civil Judge (Junior

Division) who exercised ordinary i.e. civil jurisdiction. The suit was decreed in its entirety and in appeal, Appellate Court observed that Bombay

Rents, Hotel and Lodging House Rates Control Act was applicable to tenanted premises and plaintiff was entitled to possession of encroached

portion. It therefore partly allowed the appeal. Plaintiff filed Second Appeal in High Court to seek relief of eviction of tenant from tenanted

premises also. There was cross objection by tenant about the propriety of decree of eviction from encroached area in Second Appeal. This Court

has noticed that though Civil Judge (Junior Division) was invested with powers of Small Causes Court and hence competent to try suit even u/s 28

of Bombay Rents, Hotel and Lodging House Rates Control Act, it could not have proceeded with the suit in capacity as Civil Court and ought to

have returned the plaint to appellant/plaintiff for its presentation to proper Court. This ruling does not help the petitioners but shows that a Civil

Court invested with Small Causes powers can deal with cases u/s 28 of Bombay Rents, Hotel and Lodging House Rates Control Act. It therefore

supports the view taken above by me.

9. It is therefore apparent that there is no merit in both these petitions and same are dismissed; however, without any order as to costs. Rule

discharged.