(1985) 02 BOM CK 0023

Bombay High Court

Case No: Civil Revision Application No. 461 of 1982

National Hotel and Others		APPELLANT
	Vs	
Rukaiyabai and Others		RESPONDENT

Date of Decision: Feb. 1, 1985

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 28, 29, 31, 49
- Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948 - Rule 16, 5, 7, 8, 9
- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 114, 115
- Presidency Small Cause Courts Act, 1882 - Section 41, 42, 43, 9
- Presidency Small Cause Courts Rules, 1948 - Rule 12

Citation: AIR 1985 Bom 403 : (1985) 2 BomCR 399 : (1985) 87 BOMLR 186 : (1985) MhLj 353

Hon'ble Judges: P.S. Shah, J

Bench: Single Bench

Advocate: K.N. Mirchandani and A.N. Mirchandani, for the Appellant; C.R. Dighe, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This civil revision application raises a pure question of law as to whether the Court of Small Causes, Bombay, exercising jurisdiction under the Bombay Rents, Hotel and Lodging House Rates Control Act. 1947 for short called "the Rent Act") has jurisdiction to entertain an application for review u/s 114 read with Rule 1 of Order 47 of the Civil P.C. 1908 (for short called "the Code").

2. The facts in so far as they are material are these. The respondents are the landlords and the petitioners are the tenants of the hotel premises known as "National Hotel" at Grant Road. The agreed rent of the premises is Rs. 1,790/- per month. The tenants filed an application in the Court of Small Causes at Bombay for fixation of standard rent under

S. 11 of the Rent Act. By order dt. Sept.22, 1971, the Court of Small Causes fixed standard rent of the premises at Rs. 1,017/- per month. On Nov. 4. 1971, the respondents filed an application for review of the said order. Whereas the original order of the Court of Small Causes was passed on the basis of the estimated cost of construction of the building, the review was sought on the ground that the landlords have discovered further evidence on the basis of which they wanted to prove the standard rent on the actual expenses for construction of the building by producing additional evidence. The review application was rejected by the trial Court on the preliminary ground that it was time barred.. Being aggrieved by both the orders, namely the one whereby the Court of Small Causes had fixed the standard rent and the other whereby the Court of Small Causes rejected the review application, the landlords preferred a revision application before the Appellate Bench of the Court of Small Causes. In revision, the Appellate Bench of the Court of Small Causes, disagreeing with the view taken by the trial Court, held that the application for review was filed within limitation. It was urged on behalf of the tenants that the review application was not maintainable in the absence of any provision of law conferring jurisdiction of the Court of Small Causes to review an order passed by it u/s 11 of the Rent Act. The Appellate Bench. However rejected this contention of the tenants and held that the review application was competent. In the result, without going into the merits as regards the standard rent the Appellate Bench allowed the revision application and remanded the matter back to the trial Court to dispose of the review application on merits. Aggrieved by the order of the Appellate Bench, the tenants have preferred this civil revision.

3. Mr. Mirchandani, the learned Counsel appearing for the tenants, did not dispute before me the correctness of the findings of the Appellate Bench on the question of limitation. He however, submitted that the landlords application for review was not maintainable in law and, therefore, all that the Appellate Bench should have done was to proceed with the hearing of the revision application on merits as regards the standard rent fixed by the trial Court. It was submitted by the learned Counsel that there is no provision either in the Rent Act or in the Rules framed thereunder giving a right to file an application for review u/s 114 read with R. 1 of O. 47 of the Code.

4. Now, it is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication, see Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . It will, therefore, be necessary to trace the source of power either in the Rent Act or the Rules framed thereunder or some other provision of law under which the Court of Small Causes, exercising jurisdiction in proceedings under the Rent Act. could exercise powers of review.

5. Turning to the provisions of the Rent Act, S. 28 thereof confers jurisdiction on the Courts mentioned therein. Under the said provision, in Greater Bombay, the Court of Small Causes, Bombay has 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 to which the provisions of Chap. 2 of the Rent Act shall apply, or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions. S. 28 of the Rent Act confers similar jurisdiction to the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887 for that area and elsewhere to 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 in the area in which the premises are situate. Except to the extent provided by sub-section (2) of S. 28 of the Rent Act, no other Court has jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question. Section 29 of the Rent Act provides for an appeal against a decree or order made by the competent Court under S. 28. Under the proviso to S. 29, certain decrees or orders are made non-appealable. It is also provided that there shall be no second appeal against an order passed in the appeal. Then, section 31 provides that the Courts specified in Ss. 28 and 29 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Under S. 49 of the Rent Act, the State Government is empowered to make rules for the purpose of giving effect to the provisions of the Act and such rules may provide for the manner and procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications appeals and execution of orders.

6. The provisions in the Rent Act themselves thus do not provide for the remedy of review by the court and one has to turn to the rules framed under S. 49 of the Act. In exercise of these powers the State Government has framed rules called The Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948. Under R. 2(a) ''Code'' means the Civil P.C. 1908, and under R. 2(b) ''Miscellaneous application means an application for fixing the standard rent, except where the said relief is claimed in a pending suit or proceeding, an application for determining the permitted increases, an application by a tenant for reinstatement, an application for a direction for the restoration of any essential supply or service or an application by a member of the tenant''s family under sub-cl. (c) of cl. (11) of S. 5. Rules relating to the procedure to be followed by the Court of Small Causes, Bombay in suits, proceedings, appeals etc. are contained in Chapter IV. Similarly, the procedure to be followed by Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, in suits, proceedings etc. and by the District Court in appeals are contained in Chap. IV-A and the procedure to be followed by the Court of Civil Judge (Junior Division or Senior Division) in suits, proceedings etc. and by the District Court in appeals are contained in Chap. V. Under the head ''General'' in Chap. VII contains only one Rule viz. Rule 16 which provides that in deciding any question relating to procedure not specifically provided for by the Rules, the Court shall as far as possible, be guided by the provisions contained in the Code. The scheme of Chapters IV, IV-A and V is broadly the same, It would be sufficient for our purpose to refer to the rules and procedure incorporated in Chap IV. The relevant rules in Chap. IV are Rr. 5, 7, 8 and 9.

Rule 5 provides for procedure for suits the value of the subject matter of which does not exceed Rs. 3.000/ and for proceedings for execution of decrees and orders passed therein and for distress warrants. The rule runs thus -

5. In such of the following suits and proceedings as are cognizable by the Court of Small Causes, Bombay, on the date of the coming into force of these Rules, namely :

(1) suits relating to the recovery of rents or charges for boarding, lodging or other service provided in hotel or a lodging house when the amount or value of the subject matter does not exceed Rs. 3,000/-

(2) Proceedings under Chapters VII and VIII of the Presidency Small Cause Courts Act. 1882, and

(3) proceeding for execution of any decree or order passed in any such suit or proceedings, the Court of Small Causes, Bombay, shall follow the practice and procedure provided for the time being (a) in the said Act, except Chap. VI thereof, and (b) in the rules made u/s 9 of the said Act.

7. Under R. 7 which provides for the procedure to be followed in Misc. applications. It is prescribed that in such proceedings the Court of Small Causes, Bombay, shall follow as far as may be and with the necessary modification, practice and procedure applicable to suits referred to in R. 5 as if such applications were suits for sums not exceeding Rs. 1.000/-.

8. Rule 8 prescribes the procedure for suits and proceedings which are not covered by Rr. 5 and 7 and it is provided that in such suits and proceedings the Court of Small Causes, Bombay, shall, as far as may be and with the necessary modifications, follow the procedure prescribed for a court of first instance by the Code, including Order XXXVII as modified in its application to the State.

9. Under Rule 9 in appeals u/s 29(1) of the Act the Court shall, as far as may be and with the necessary modifications, follow the practice and procedure prescribed for appeals from original decrees by the Code. It would be clear that these rules do not themselves provide for a review application. The combined effect of Rules 5, 7 and 9 is that the Court of Small Causes, Bombay is required to follow the practice and procedure provided for the time being (a) in the said Act, except Chapter VI thereof, and (b) in the rules made u/s 9 of the said Act.

10. Section 9 of the Presidency Small Cause Courts Act, 1882, inter alia provides that the High Court may, from time to time by rules having the force of law prescribe the procedure to be followed and the practice to be observed by the Small Cause Court. Pursuant to the powers conferred on the High Court it has framed rules of procedure called "The. Presidency Small Cause Court Rules". Sub-rule (2) of Rule-l of the said Rules provides -

"The portions of the Civil P.C. Act V of 1908 as modified in its application to the State of Bombay up to the 30th Dec.1957, specified in the 1st column of Schedule hereto annexed shall, subject to the additions, alterations and modifications specified in the 2nd and 3rd columns of such schedule, extend and shall be applied to the Small Cause Court and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it except where such procedure is inconsistent with the procedure prescribed by any specific provisions of the Presidency Small Cause Courts Act. l882."

11. Turning to the schedule of the said rules it is clear that the provisions relating to the review contained in S. 114 and O. XLVII of the Civil P. C. are expressly omitted from application to the proceedings before the Presidency Small Cause Court. The Schedule contains two separate columns. In the first column port ion of the Civil P.C. extending to the Court are mentioned while the second column describes the additions, alterations and modifications to the particular portions of the C. P.C. mentioned in the first column of the schedule. On a reading of these columns in the Schedule indicates that the provisions of the review contained in S. 114 are expressly omitted. Under the column "portion of the Civil P.C. extending to the Court whereas a reference to the review provisions in Part VIII of the Civil P. C. (which included S. 114) are expressly mentioned, there is no reference whatsoever to O. XLVII. The effect is that neither the provisions of S. 114 nor the provisions of O. XLVII of the Civil P. C. are applicable to the Small Cause Court, Bombay. In other words, it is clear that as far as the practice and the procedure provided in the rules made under S. 9 of the Presidency Small Cause Courts Act are concerned, the review provision in the Code are expressly excluded. As is seen above, Rule 5 of the Rent Control Rules also refers to the applicability of the procedure provided in the Presidency Small Cause Courts Act, 1882, except Chap. VI thereof. Chap. VI does not refer to the powers of review but anyway, the applicability of the provisions contained in the said Chapter have been expressly excluded by R. 5 of the Rent Control Rules. However, a reference must be made to the provisions contained in Chap. VII of the Presidency Small Cause Courts Act, 1882. Ss. 41, 42 and 43 only are relevant for our purpose. S. 41 invests the Court of Small Causes the jurisdiction to entertain and try 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 the licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings. S. 42 provides for appeals. S. 43 provides-

"In all suits, appeals and proceedings under this Chapter, the Small Cause Court shall, as far as possible and except as herein otherwise provided, follow the procedure prescribed by the Civil P. C. 1908."

12. S. 43, however, will have to be read along with S. 9 of the Act which confers power on the High Court to frame rules or procedure to be observed by the Small Cause Court and as mentioned above the provisions in the Code relating to the review have been expressly omitted so far as the suits and proceedings in the Small Cause Courts are

concerned. The next result is that neither under the Rent Act nor under the Rules framed thereunder nor under the Presidency Small Cause Courts Act or the Rules framed thereunder is there a provision conferring the power of review on the Small Cause Courts in the proceedings under the Rent Act. As held by the Supreme Court the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The provisions discussed above rule out any such power being conferred even by implication.

13. Mr. Dighe. however, placed reliance on R. 16 of the Rent Control Rules which provides that in deciding any question relating to procedure not specifically provided for by the rules the court shall, as far as possible, be guided by the provision: contained in the Code. According to Mr. Dighe, R. 16 which is a general provision would clearly extend operation of the provisions for review contained in the Civil P. C. to all proceedings under the Rent Act. It is not possible to accept this contention. It would be obvious that R. 16 does not ipso facto extend the provisions of the Code to the proceedings under the Rent Act. Nor does it have the effect of overriding the provisions framed by the High Court under S. 9 of the Presidency Small Cause Courts Act which are expressly made applicable to the proceedings under the Rent Act by the provisions contained in the rules in Chap. VI. The rule merely says that the court is to be guided by the provisions contained in the Code, if any question relating to the procedure does not specifically provide or rules arise in a proceeding before it. There is no question of invoking these provisions having regard to the fact that the rules framed by the High Court expressly lay down that the provisions regarding review ire not to apply to the proceedings in the Small Cause Court. If the interpretation as is sought to be put on R. 16 by the learned counsel is accepted it would make the provisions of Rr. 5 and 7 of the Rent Control Rules redundant particularly having regard to the fact that it is specifically provided in these Rules that the Small Cause Court has to follow the procedure laid down in the Rules framed by the High Court. It must be presumed that the legislature was aware of the fact that certain provisions of the Code including S. 114 and Order XLVII of the Code have been expressly excluded under the Rules framed by the High Court and if it intended to override the rules framed by the High Court in respect of the proceedings falling under the Rr. 5, 7 and 8 of the Rent Control Rules, the wording of S. 16 would have been different. The expressions such as as far as possible'' and ''be guided'' used in R. 16 would show that the provision is not intended to confer power to review by resorting to S. 114 or O. XLVII of the Code. As indicated earlier, R. 16 can have no application when express provision is made excluding certain provisions contained in the Code.

14. On a consideration of the provisions of the Rent Act and the Rules framed thereunder as well as the provisions of the Presidency Small Cause Courts Act and the Rules of Procedure framed by the High Court thereunder it would appear that the Small Cause Court has no power of review in proceedings under the Rent Act. There is neither any express nor any implied provision from which it can be said that the Small Cause Court is invested with the jurisdiction to entertain an application for review as contemplated under

S. 114 read with O. XLVII of the Civil P. C.. It would, therefore, follow that the review application filed by the landlord in the trial court is not maintainable.

15. Mr. Dighe urged that even though there is no legal provision for making an application for review, still the court is not divested of its inherent powers under S. 151 of the Code, in. exceptional cases, to do justice between the parties. Assuming that such powers can be exercised by the Court of Small Causes in exceptional cases, such a case has not been made out by the landlords in this case. The case made out is purely a case for review solely on the ground that they have come in possession of certain additional evidence after the decision of the case. This is no ground for exercise of powers under S. 151 of the Code. Reference may be made to a decision of the Madras High Court reported in the case of Kutinha v. Nathal Pinto Bai, AIR 1941 Mad 272, where the court held that unless a statute provides a remedy by way of review, the court cannot review its own judgment except in very exceptional circumstances, such as, for example, where it passed an order inadvertently or on account of some false representation by the officers of the Court. Such is not the case here. All that is contended by the landlords in this case is that they have discovered further evidence on the basis of which they want to prove the standard rent on the actual expenses for construction of the building by producing additional evidence. Since the application for review is not maintainable the order of the appellate bench cannot be sustained. The Civil Revision Application is allowed and the impugned order dt. July 7, 1982, remanding the matter back to the trial court is quashed and set aside. The landlord''s application for review by permitting them to lead additional evidence stands rejected. The appellate bench shall proceed to hear and dispose of the revision application as far as the decision in the standard rent application is concerned, in accordance with law. No order as to costs.

16. Rule made absolute accordingly.

17. Revision allowed.