

(1956) 02 BOM CK 0035

Bombay High Court

Case No: Civil Revision Application No. 383 of 1955

Ranchhodlal Vallabhdas

APPELLANT

Vs

Mahendrakumar Ambalal

RESPONDENT

Date of Decision: Feb. 17, 1956

Acts Referred:

- Bombay Civil Courts Act, 1869 - Section 23
- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 28, 28(1), 28(2)
- Civil Procedure Code, 1908 (CPC) - Section 24

Citation: AIR 1956 Bom 481 : (1956) 58 BOMLR 465 : (1956) ILR (Bom) 776

Hon'ble Judges: Chagla, C.J; Dixit, J; Bavdekar, J

Bench: Full Bench

Advocate: N.C. Shah, for the Appellant; M.I. Patel, for D.V. Patel, for the Respondent

Judgement

Chagla, C.J.

A question relating to jurisdiction arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, has been referred to this Full Bench. The scheme of that Act has often been considered by this Court and it is dear that u/s 28 special jurisdiction to try suits arising under the Act was conferred upon ordinary Courts of the land which have been set up under the Civil Courts Act.

The Courts upon which special jurisdiction was conferred are enumerated in Section 28. u/s 28(1)(a) in Greater Bombay the Court is the Court of Small Causes and under Clause (aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court. Therefore, in the State of Bombay we have Courts of Small Causes in Poona and Ahmedabad and this provision would apply to those- Courts.

Then u/s 28(1)(b) 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 try suits arising under the Act. In most Taluka towns we have Courts presided over by the Civil Judge, Junior Division.

In those places those will be the Courts over which special jurisdiction has been conferred, and where we have Courts which are not presided over by a Civil Judge, Junior Division, then the Court designated is the" Court presided over by Civil Judge, Senior Division, having ordinary jurisdiction. Then comes Section 28(2)(a) which has caused some difficulty which has necessitated this Full-Bench:

"Notwithstanding anything contained in Clause (aa) 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 Cause 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". Then Clause (b) provides:

"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 or proceed from the stage at which it was withdrawn." And Clause (c) States:

"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 maybe, be deemed to be the Court of Small Causes." Therefore the scheme of Section 28(2)(a) is very clear. Only in cases pending before the Court of Small Causes established under the Provincial Small Cause Courts Act, the District Court has been given the special power of withdrawing the suits pending in that Court & transferring them to another Court which is designated as a Court which would have the same special jurisdiction that the Small Cause Court has been given, and that Court is the Court of the Civil Judge, Senior Division.

What has been sought to be argued is that when the District Judge exercises his power u/s 3(2)(a) of withdrawing a suit and transferring the same for trial to the Court of the Civil Judge, Senior Division, he can only transfer it to the Civil Judge, Senior Division, and to no other Judge In-advancing this argument the provisions of the Bombay Civil Courts Act, 1869, are ignored. Before we look at that Act a certain well established principle may be enunciated.

2. When the Legislature confers special jurisdiction upon an ordinary Court of the land, that jurisdiction has to be exercised by the ordinary Court according to the procedure of that Court unless in the legislation conferring special jurisdiction there is some provision to the contrary. All the ordinary administrative and other powers of the Court are to be exercised as laid down in the- law setting up that Court.

All that the special legislation does is to confer special jurisdiction upon the Court. In other words, the Court, over and above "the ordinary jurisdiction that it exercises, also exercises a certain special jurisdiction, but unless we find some indication in the law creating the special jurisdiction that that special jurisdiction has to be exercised in a special manner or that the Court has to function in a particular manner, the Court must function in the ordinary way and according to the ordinary law of the land.

In Section 28 there is no indication whatever that the Court of the Civil Judge, Senior Division, to which suits have to be transferred u/s 28(2)(a), has to function in any different manner than it would function as the ordinary Court, or that the procedure which has got to be followed has to be any different procedure. Therefore, we must now turn to the Civil Courts Act to find out what are the powers and the functions and the procedure of the Court of the Civil Judge, Senior Division.

3. The underlying scheme of the Bombay Civil Court Act, 1869, is that it sets up District Courts, and it also sets up in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct. Therefore ordinarily in each place, whether it is a Taluka place or a district town, there is one Court other than the District Court and to that Court one or more Judges may be appointed: Section 23, para 5, provides:

"For the purpose of assisting the Judge of any subordinate Court in the disposal of the civil business on his file, the High Court may appoint to such Court from the members of the Subordinate Civil Judicial Service of the Province one or more Joint Civil Judges, or the District Judge may, with the previous sanction of the High Court, depute to such Court the Judge of another Subordinate Court within the district.

A Civil Judge thus appointed or deputed to assist in the Court of another Civil Judge shall dispose of such Civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Judge of such Court."

Therefore, the Principal Judge, if one might so designate the Judge of the Court, in each place may have other Judges appointed to assist him in disposing of the work and it is left to the Principal Judge to refer cases for disposal to one or more of his colleagues. But the Court is one and the Court may consist, as we have already pointed out, of one Principal Judge or one Principal Judge and one or more Judges to assist him.

Then Section 24 deals with the classes of Judges and they are Civil Judge, Senior Division and Civil Judge, Junior Division, and it lays down what the jurisdiction of these Judges is; and Section 25 deals with the special jurisdiction of the Civil Judge, Senior Division. It is in the light of these provisions that we must now again turn to Section 28(2)(a) of the Rent Act.

4. It will be immediately noticed that the Legislature did not intend that when a suit was transferred from the Small Cause Court of the Civil Judge, Senior Division, that it should be tried by any particular Judge of that Court. No Judge is designated as the Judge who alone should try a suit transferred under the circumstances mentioned in Section 28(2)(a).

All that the Legislature was concerned with was that instead of the ordinary Court, viz., the Small Cause Court, having special jurisdiction in certain circumstances, another ordinary Court of the land, Viz., the Court of the Civil Judge, Senior Division should have jurisdiction. Therefore it is entirely fallacious to suggest that the transfer u/s 28(2)(a) is to the Civil Judge, Senior Division. The transfer is not to the Civil Judge, Senior Division, but the transfer is to the Court of the Civil Judge, Senior Division. This is not matter of interpretation; it is the very language used by the statute. Therefore, if the transfer is to the Court of the Civil Judge, Senior Division, the provisions to which reference has just been made in Section 23, para 5, must apply.

Once the Court is seized of the matter transferred to it by the District Court u/s 28(2)(a), the Principal Judge of that Court is vested with the power conferred upon him u/s 23, para 5. Therefore in our opinion, on the transfer of a rent suit from the Small Cause Court by the District Court u/s 28(2)(a) to the Court of the Civil Judge, Senior Division, the Principal Judge, of that Court has the power to refer that case to any one of his colleagues who has been appointed to assist him in the disposal of the cases on his file.

The colleague may be a joint Civil Judge, Senior Division, or he may be a Civil Judge Junior Division, because not only the Joint Civil Judge Senior Division, but also the Civil Judges, Junior Division, are Judges of one and the same Court, the Court presided over by the Civil Judge, Senior Division.

5. Any other construction would lead to this rather curious result that whereas the Legislature trusted Courts of Civil Judges, Junior Division in taluka places to try rent suits, they insisted on only the senior most Civil Judge trying similar suits in district places like Ahmedabad and Poona. No logical reason has been suggested by Mr. Shah why the Legislature should have intended to make this distinction.

All that he could contend was that it may be a lacuna in the legislation; and that we must give effect to legislation as we find it. Before we can come to the conclusion that there is a lacuna in any law passed by the Legislature, our attempt must be to give such a construction to a law passed by the Legislature as would avoid any such lacuna and avoid any such anomalies, and in our opinion the clear language of Section 28(2)(a) leaves no doubt that that is the only construction possible,

6. A contrary view has been taken by a Division Bench of this Court in -- "Naranbhai Shakarbhai v. Nandlal", Civil Ref. No. 22 of 1954 (A), decided by Mr. J. Chainani and Mr. Justice Gokhale. With great respect to the learned Judges, they have attached

more importance to Section 24, Bombay Civil Courts Act, which merely deals with the pecuniary Jurisdiction of the Senior and Junior Civil Judges than to the fact that the Court set up under that Act is one Court consisting of one or more Judges.

The learned Judges have also emphasised the fact that u/s 28(2)(a) the transfer of the suit is for trial and disposal and that the suit having been transferred it must be tried and disposed of only by the Senior Civil Judge and could not be referred to any other Judge for trial or disposal.

Again, with respect, this would be the correct view if a particular Judge was designated by the Legislature as the Judge who should try or dispose of the suit. But if it is not a Judge of a Court which, is designated, then it is the Court which is trying or disposing of the suit, whether it is tried and disposed of by one Judge or another Judge of the same Court.

7. There is one other question which also arises on this reference and that is whether apart from the power of the principal Judge of the Civil Court to refer cases to his colleagues u/s 23, para 5, the District Judge himself could transfer a suit from the Small Cause Court and direct a joint Senior Civil Judge or a Junior Civil Judge to try that suit, & the determination of that question depends upon whether Section 28 of the Rent Act has in any way abrogated the provisions of Section 24, Civil P. C.

In our opinion, Section 28 of the Rent Act does: not affect the right of the District Judge u/s 24, Civil P.C. in the slightest degree, if a rent suit is pending in the Small Cause Court, then u/s 24, Civil P. C. the District Court has the power to transfer it to a Court subordinate to the District Judge provided that Court is competent to try the suit.

Therefore, the District Judge could only exercise his power u/s 24, Civil P. C. of transferring rent suits provided he transfers those suits to those ordinary Courts upon, which special jurisdiction has been conferred by Section 28 of the Rent Act, and therefore if the District Judge withdraws the suit from the Small Cause Court and transfers it to a Joint Senior Civil Judge or to a Junior Civil Judge, he is validly and properly exercising his power u/s 24, Civil P. C. because both the Joint Senior Civil Judge and the Junior Judge have jurisdiction to try the rent suit u/s 28.

8. In this particular case which has been referred to us by the Division Bench consisting of Mr. Justice Gajendragadkar and Mr. Justice Gokhale, as a matter of fact the learned District Judge transferred the suit to the Joint Senior Civil Judge, Ahmedabad. In our opinion, he exercised his power u/s 24, Civil P. C. read with Section 28(2)(a) of the Rent Act.

9. Therefore, the answer to the first part of the question submitted to us will be in the affirmative and to the second part in the negative. We will frame a further question, viz., "Whether the District Court has the power to transfer a suit pending in a Court of Small Causes to a Joint Senior Civil Judge or to a Civil Judge, Junior

Division, u/s 24, Civil P.C.?" and answer that question in the affirmative.

10. Answer accordingly.