
(2001) 12 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 26 of 1990

Akbarali Husenali Gulamreza

APPELLANT

Vs

Hotel Rezaliya Private Ltd., Pune

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Bombay Rent Control Rules, 1948 — Rule 9A, 9B
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 17(1), 28(1)
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 9 Rule 13
Constitution of India, 1950 — Article 227
Provincial Small Cause Courts Act, 1887 — Section 17

Citation : (2002) 2 ALLMR 338 : (2002) 4 BomCR 329 : (2002) 2 MhLj 133

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; R.S. Datar, for the Respondent

Final Decision : Allowed

Judgement

1. This petition, filed under Article 227 of the Constitution of India, takes an exception to the order dated 15-12-1989 passed by the 5th Additional District Judge, Pune in Misc. Civil Appeal No. 121/1987, confirming the order dated 7-3-1987 passed by the 2nd Additional Small Causes Court, Pune, in Misc. Application No. 565/1983, whereby the application filed under Order 9, Rule 13 of Code of Civil Procedure, 1908 ("C.P.C." for short), was dismissed.

FACTS

2. The facts giving rise to the present petition in nutshell are as under :--The petitioner herein was a tenant in the suit premises owned by the respondent M/s Hotel Rezaliya Private Limited.

3. The respondent in the capacity of landlord had filed civil suit No. 226/1978 against the petitioner for possession of the suit premises. One of the dates on which suit was fixed for hearing was 6-7-1983. The petitioner could not remain

present on 6-7-1983. With the result, the Court trying the suit proceeded *ex parte* and decreed the suit *vide* its judgment and decree dated 6-7-1983.

4. The petitioner thereafter filed application under Order 9, Rule 13 of the CPC being Misc. Civil Application No. 565/1983 in the Small Causes Court at Pune for setting aside the judgment and decree passed *ex pane* against him. The said application was made on 1-8-1983, wherein it was pleaded that due to the sickness of petitioner's wife, who was suffering from heart disease, the petitioner could not remain present in the Court on the date fixed for hearing. It was also pleaded in the said application that the advocate for the petitioner could not be informed well within time because of the said sickness. The petitioner had also stated and submitted in the said application that the suit filed by the respondent was not for the arrears of rent but for possession, for having changed the user of the suit premises. Hence the major relief sought for was that of the possession of the suit premises.

5. On being noticed, the respondent/landlord (original plaintiff/decreed holder) appeared and opposed the said application and raised a preliminary objection about the maintainability of the application moved under Order 9, Rule 13 of the Civil Procedure Code. The preliminary objection was that u/s 17 of the Provincial Small Causes Courts Act, ("Act for short) it was mandatory on the part of the applicant/original defendant, against whom *ex pane* decree was passed, either to deposit in the Court the amount due from him under the decree or in pursuance of the judgment or furnish such security, for the performance of the decree or compliance with the judgment, as the Court may direct on the prior application made in that behalf. In the submission of the respondent/opponent, the applicant/petitioner had neither deposited the amount due under the decree nor applied for order of the Court seeking permission to give security for the said amount. It was thus contended that for want of compliance of proviso to section 17 of the Act, the application was not maintainable.

6. The learned judge of the Small Causes Court, trying the Misc. Application referred to hereinabove, heard both the parties at length and held that, proviso to Section 17 of the Act was very much applicable to the proceedings and as such it was obligatory on the part of the petitioner (original applicant) to comply with the proviso of Section 17 of the Act. In this view of the matter, it was held that the application was not maintainable in absence of compliance of the provision of Section 17 of the said Act. In the result, the application came to be dismissed *vide* order dated 7-3-1987. The preliminary objection raised by the respondent (non-applicant) was upheld.

7. Being aggrieved by the aforesaid order of the 2nd Small Causes Judge, Pune, the appeal was preferred under Order 43, Rule I(d) of the Civil Procedure Code. The said appeal came to be registered as Misc. Appeal No. 121/1987. The said appeal was heard by the 5th Additional District Judge, Pune, who was also pleased to hold that the provision of Section 17 of the Act was very much applicable and on the face of non-compliance thereof, the Court below was

perfectly justified in rejecting an application seeking to set aside *ex parte* decree. In the result, the appeal came to be dismissed.

8. Being aggrieved by the aforesaid judgment of the 5th Additional District Judge, Pune, the petitioner has invoked extraordinary writ jurisdiction of this Court under Article 227 of the Constitution of India.

THE ARGUMENTS

9. Heard the learned counsel for the petitioner. The only question canvassed by the learned counsel appearing for the petitioner is that the order can only be said to have been made by the Small Causes Court Act in exercise of its jurisdiction u/s 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act" for short) Act. The provision of section 17 of the Small Causes Courts Act could not have been made applicable to the said proceedings. Consequently, both the Courts below were not justified in upholding the preliminary objection raised by the non-applicant/respondent with regard to the non-compliance of provision of Section 17 of the said Act. In this view of the submission, the learned counsel appearing for the petitioner contends that the impugned orders need to be quashed and set aside. The learned counsel for the petitioner placed reliance on the two judgments of this Court, one in the case of *Hemchand M. Singhanian (Landlord) v. Subhakaran Nandlal Baragra (Tenant)*, 1967 MH.L.J. 59 and *Anr. in the matter of Habib Ahmed Khudabux v. Abdul Khadar Rehmanji*, 1974 MH.L.J. 812.

10. Per Contra, the learned counsel appearing for the respondent urged that u/s 28 of the Bombay Rent Act certain Courts were designated as Courts of exclusive jurisdiction to entertain and try suits and proceedings between landlord and tenant, relating to recovery of rent and/or possession to which the provisions of the Bombay Rent Act applied, and also to determine claims and questions arising under the said Act. He urged that reading Section 28 of the Bombay Rent Act and Section 17 of the Provincial Small Causes Courts Act together, it is clear that the Small Causes Court has to, as far as may "be possible, follow the practice and procedure of the Court of Small Causes as prescribed by the Provincial Small Causes Courts Act.

11. He further urged that merely by designating the Small Causes Court as a Court of exclusive jurisdiction under Bombay Rent Act, it does not become a special Court. In his submission, the Court of Small Causes was competent to exercise all powers which are conferred upon it by virtue of its constitution under the Statute, which governs it. He sought to place reliance on the Supreme Court judgments in the case of *Khemchand Dayalji (Tenant) v. Mohammadbhai Chandbhai (Landlord)*, 1970 MH.L.J. 848

STATUTORY SCHEME

12. Before advertng to the rival contentions, it would be useful to refer to the relevant provision of Section 17 of the Provincial Small Causes Courts Act, 1887,

which runs as under:

"17(1) The procedure prescribed in the Code of Civil Procedure, 1908, shall, save insofar as is otherwise provided by that Code or by this Act be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex pane or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give (such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed)."

13. The direction of aforesaid provision of Section 17 requires that on presentation of application for setting aside the ex pane decree, the applicant either has to deposit in the Court the amount due from him under decree or furnish security for the purpose of compliance decree. It is clear from the judgment of the trial Judge that the petitioner-applicant has not complied with either of the conditions. Therefore, the application for setting aside ex parte decree was held to be not maintainable by both the Courts below.

14. It is clear from the provisions of the Bombay Rent Act that the said Act has empowered Small Causes Courts with exclusive jurisdiction to try certain suits under the Rent Act. The Act has not set up Special Courts for hearing of such suits, but it was provided that the Small Causes Court shall have jurisdiction to entertain and decide the suits filed under the provisions of the Bombay Rent Act.

15. The relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act LVII of 1947 are intended to control rents and to confer protection against eviction of tenants of premises in certain urban areas in the Province of Bombay. By Section 28 of the Act certain Courts were designated as Courts of exclusive jurisdiction to entertain and try suits and proceedings between a landlord and tenant, relating to recovery of rent of possession to which the provisions of the Act applied, and also to decide claims or questions arising under the Act. Section 28 as originally enacted and later amended by Bombay Acts LVIII of 1949 and XV of 1952 insofar as it is material reads :

"28. Jurisdiction of Courts. (1) Notwithstanding anything contained in any law 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 Greater Bombay, the Court of Small Causes, Bombay.

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such Court and (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 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 any of the provisions of this part apply 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 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....."

Section 28 did not set up new Courts to try suits or proceeding between landlords and tenants, it invested existing Courts with exclusive jurisdiction to try suits and proceedings of the nature set out and, decide claims or questions arising under the Act. Section 31 of the Act provides, inter alia that the Courts specified in section 28 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Section 49 authorises the State Government to make rules for the purpose of giving effect to the provisions of the Act and in particular to make rules, among other subjects, for the 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. Pursuant to the authority conferred, rules were framed by the then Government of Bombay and Rules 9-A to 9-D which deals with the procedure to be followed by the Court of Small Causes established under the Provincial Small Cause Courts Act for trying suits, proceedings, appeals etc.

Section 29 provides for appeal and review from a decree or order made by the Court of Small Causes exercising jurisdiction u/s 28 to a Bench of two Judges of the said Court in Greater Bombay. Two provisos were added to Section 29(1) by the Bombay Act No. 61 of 1953 which are considered hereinafter. Section 31 is important and reads as follows :--

"31. Procedure of Courts. -- The Courts specified in Sections 28 and 29 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them."

Section 49 confers rule making powers on the State Government. Clause (iii) (re-lettered as Clause (e) by Mah. 18 of 1987) of Section 49(2) is material and says as under :--

"the 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 ;"

16. In exercise of the powers conferred on it, the State Government has made rules, known as Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948 (hereinafter referred to as the "Rent Control Rules" for short), Rules 9-A, 9-B, and 9-C of the said Rules read as follows:

"9-A. Procedure for suits the value of the subject matter of which does not exceed Rs. 2,000/- and for proceedings for execution of decrees and orders passed therein. -- A Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, shall follow the practice and procedure prescribed for the time being by or under the said Act, in trying and hearing (1) suits or proceedings relating to the recovery of rent or charges for boarding, lodging or other service provided in a hotel or lodging house or the recovery of possession of any premises, when amount or value of the subject matter does not exceed Rs. 2,000/-, and (2) proceedings for execution of any decree or order passed in any such suit or proceeding.

9-B. Procedure in applications for fixing standard rents, etc. -- In miscellaneous applications a Court of Small Causes established under the Provincial Small Cause Courts Act, 1887 shall follow, as far as may be, and with the necessary modifications the procedure applicable to suits or proceedings referred to in rule 9-A as if such applications were suits of the description referred to therein.

9-C. Procedure for other suits and proceedings. -- In suits or proceedings other than those referred to in rules 9-A and 9-B a Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, shall follow, as far as may be, and with the necessary modifications the procedure prescribed for a Court of first instance by the Code."

9-D. Procedure in appeals.-- In an appeal u/s 29(l)(b) of the Act from a decree or order of a Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, the District Court shall, as far as may be, and with the necessary modifications, follow the practice and procedure prescribed for appeals from original decrees by or under the Code."

17. The close reading of the above provisions would show that the Small Cause Courts have a jurisdiction u/s 28(1); inter alia to entertain and try suits or proceedings between landlord and tenant, relating to the recovery of possession of any premises to which Bombay Rent Act applies. Section 29(1) confers general right of appeal from any decree or order made by the Court u/s 28 of the Act. It is also important to notice here that Section 31 enjoins upon the Court to follow the prescribed procedure in trying and hearing suits, proceedings etc. Therefore, the Court of first instance which hears the matter specified in Section 28(1) must follow the procedure prescribed by the Rent Rules, i.e. Rules 9-A, 9-B or 9-C according to the nature and amount of value of the subject matter involved.

THE RULINGS/AUTHORITIES

18. The learned counsel appearing for the petitioner, firstly, placed reliance on the judgment of the learned Single Judge of this Court in the case of Hemchand v. Subhkaran (cited supra). In that case, in an ejectment suit, filed by the landlord against a tenant, in the Court of Small Causes at Bombay u/s 28 of the Rent Act an ex parte decree was passed on November 10, 1964. The tenant applied for setting aside the decree under Order 9, Rule 13 of the Civil Procedure

Code. That application was rejected by the trial Court. On an appeal by the tenant the said order was set aside by the appellate Bench and the case was remanded to the trial Court. Against the said order of remand the landlord had filed a Civil Revision Application to this Court and contended that the appeal to the appellate Bench was not competent as in entertaining the application for setting aside the ex parte decree and in so ordering the Small Causes Court did not exercise jurisdiction u/s 28 of the Rent Act as it came to an end as soon as the ex parte decree for eviction was passed and tenant's application for setting aside the ex parte decree could be regarded as an application to the Bombay Small Causes Court exercising jurisdiction under the Small Causes Court Act. The learned Judge rejected the said contention and observed as under:--

"..... No doubt the jurisdiction of the Special Court set up u/s 28 is confined to matters specified therein, which include, among others, the entertaining and trying of suits or proceedings between a landlord and a tenant..... But once the Special Court entertains and tries a suit or proceeding which falls within its exclusive jurisdiction, all orders made by it in the said suit or proceeding or in relation thereto, are made by it as a Special Court, that is, a Court exercising jurisdiction u/s 28 and not only such of them as actually relate to the recovery of rent or possession. Appeal provided u/s 29 of the Act is not confined only to the final decree or order or to an order, which relates to recovery of rent or possession but it lies against all orders except those which are excluded under the proviso to the section."

While deciding the aforesaid contention, the learned Judge held that ex parte decree, though passed by the Bombay Small Causes Court, was not passed by it in exercise of the jurisdiction under the Presidency Small Causes Courts Act but as a Special Court under the Bombay Rent Act, and specifically held that the application under Order 9, Rule 13 of the CPC was made in its character as a special Court exercising jurisdiction u/s 28 of the Bombay Rent Act. As such, the said application was very much maintainable. The learned Judge held that the suit was a suit under Bombay Rent Act, entertained by the Bombay Small Causes Court as a Special Court under the Bombay Rent Act. The jurisdiction which the Court was exercising while considering the provisions of Order 9, Rule 13, was the jurisdiction which it had exercised while it was trying the suit and the application was made to it in that exercise of said jurisdiction only.

19. The another judgment on which reliance was placed by the learned counsel appearing for the petitioner is on the case of Habib Ahmed v. Abdul Khadar (cited supra), wherein the question raised was whether execution of a decree is a proceeding within the meaning of Section 28(1) of the Bombay Rent Act, and after referring to the various provisions of the Bombay Rent Act and the Rules extracted therein and in the light of the provisions of the Civil Procedure Code, it was held that the execution of the decree u/s 28(1) is included in the term proceeding referred to in Section 28(1) of the Act. As such, it was held that execution of decree is a proceeding within the meaning of Section 28(1) of the

Bombay Rent Act. The learned Counsel appearing for the petitioner, based on the aforesaid two judgments, sought to canvass that the application under Order 9, Rule 13 was to a Special Court under the Rent Act and not to the Small Causes Court under the provisions of Act as such the provisions of Section 17 was not applicable.

20. At this juncture, it will not be out of place to mention that in both the aforesaid judgments, none of the Courts were dealing with the question, which arises in the present petition.

21. The Apex Court had an opportunity to deal with more or less a similar question in the case of *Khemchand v. Mohammadbhai* (cited supra) wherein the Apex Court held that Section 28 did not set up new Courts to try suit or proceeding between the landlord and tenant. It only confers on the existing Courts the exclusive jurisdiction to try the suits in respect of matters relating to possession of premises and recovery of rent and to determine claims and questions arising under the said Act. It thereby does not become special Court. It is a Court which is competent to exercise all powers conferred upon it by virtue of its constitution under the Statute which governs it.

THE ISSUE

22. The substantive question on the rival contentions as between the parties, which squarely falls for consideration in the present petition is :

"Whether procedure prescribed under the Provincial Small Causes Courts Act, 1887 is applicable to Small Causes Court functioning under the Bombay Rent Act?

FINDINGS

23. At the outset, it may be stated that all the three judgments referred to by the rival counsel, in my opinion, lay down the same proposition of law. There does not appear to be any conflict in the law laid down therein. In fact the legal position is fairly settled that an appeal lies against an ex parte decree or order with reference to the provisions referred to above. The procedure which is required to be followed by the Small Causes Court while exercising its exclusive jurisdiction under the Bombay Rent Act is the procedure prescribed by the Bombay Rent Control Rules, 1948, only.

24. In *Hemchand's* case (cited supra), the learned Judge while deciding the case, held that the order impugned before it on the application filed under Order 9, Rule 13 was an order passed by the Small Causes Court in exercise of its jurisdiction under the Bombay Rent Act. The provisions of Order 9, Rule 13 were held applicable in accordance with the procedure applied by the Presidency Small Causes Court under the rules framed u/s 9 of the Presidency Small Causes Courts Act. The source of applicability of this procedure lies in Rule 5 of the Bombay Rent Control Rules, 1948. Para 4 of the said judgment will make the position clear, which is as under:--

"The suit filed by the plaintiff against the defendant in the present case was undoubtedly a suit falling u/s 28 of the Bombay Rent Act relating to the recovery of rent and possession of the suit premises, to which the provisions of Part II of the Rent Act apply. The Bombay Small Causes Court in entertaining the said suit was exercising the jurisdiction vested in it as a Special Court u/s 28 of the Bombay Rent Act. In exercising the said jurisdiction the procedure, which it had to follow, was the procedure as indicated by Section 31, i.e. the procedure in accordance with the rules framed by the State Government u/s 49 of the Act. Now, a perusal of the said rules would show that if the suit fell under Rule 5(2) the procedure to follow was the procedure prescribed under the rules framed u/s 9 of the Presidency Small Causes Courts Act, and if the suit fell under Rule 8, (he procedure prescribed by the Civil Procedure Code. As I have already pointed out, u/s 8 of the Civil Procedure Code, the High Courts were empowered to extend the provisions of the Code to the Presidency Small Causes Courts and Section 9 of the Presidency Small Causes Courts Act also provided that the High Court may from time to time prescribe the procedure to be followed and the practice to be observed by the Small Causes Courts. Acting under these powers the High Court has made rules, which are called the Presidency Small Causes Court Rules and these rules have provided for the application of certain provisions of the CPC with certain modifications to the Small Causes Court and under the said rules Order IX is made applicable to the Presidency Small Causes Court. Both in suits falling under the purview of Rules 5 and 8, therefore, the Special Court exercising jurisdiction u/s 28 of the Bombay Rent Act will be entitled to follow the procedure prescribed under Order IX, Rule 13 to entertain an application for the setting aside of the ex parte decree passed by it as a result of the consequence of the appearance of one of the parties to the suit. In the present case, therefore, the application made by the defendant for setting aside the ex parte decree, which had come to be passed as a consequence of his default of appearance on the date of the hearing of the suit was an application, which the Special Court trying the suit was competent to entertain as such Court."

25. Similarly, even in Habib's case (cited supra), it has been clearly held that the portions of Civil Procedure Code, as applied under the Presidency Small Cause Courts Rules, are made applicable to the Small Causes Court under the Rent Act, in accordance with the Bombay Rent Control Rules. It is also worth mentioning that both the above cases were cited by the Court of Small Causes, Bombay and hence, the reference is only to the Bombay Rent Control Rules as applicable to it.

26. A first reading of the decision of the Supreme Court in Khemchand's case certainly gives an impression that the existing Court, conferred with exclusive jurisdiction to try suits, which are not included in its existing ordinary jurisdiction, can exercise its powers invested by the Act constituting it even while functioning in its independent exclusive jurisdiction. However, a close reading of the judgment reveals that the jurisdiction to exercise its powers under the existing ordinary jurisdiction can also be exercised by such Court while functioning in its exclusive jurisdiction; provided such power is also conferred

upon the Court by the Act conferring exclusive jurisdiction. The issue before the Supreme Court was whether the Small Causes Court in the Ahmedabad had jurisdiction to issue a distress warrant while exercising its power u/s 28 of the Bombay Rent Act. The Supreme Court held that as a Court of Small Causes governed by the Presidency "Small Causes Court Act, 1882, it can issue distress warrant u/s 53 of the Presidency Small Causes Court Act. However, the Supreme Court traced power to issue distress warrant in Rule 5 of the Bombay Rent Control Rules, which conferred such powers to the Presidency Small Causes Court while functioning in its exclusive jurisdiction u/s 28 of the Bombay Rent Act. In other words, the scope of jurisdiction to be exercised by the existing Court of its powers under the parent Act must be gathered from the Act conferring the exclusive jurisdiction. It was thus held that the procedure to be followed by the Court, vested with an exclusive jurisdiction, has to be traced in the provisions of the Act conferring such exclusive jurisdiction. The Supreme Court thus ruled that the procedure prescribed for the Presidency Small Causes Courts Act was applicable by virtue of the special provisions in Bombay Rent Control Rules as were made applicable to the city of Ahmedabad.

The ratio laid down in the above case of Khemchand has been explained by the Gujarat High Court in Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad, . The above view is supported by the decision of the Gujarat High Court.

27. As mentioned hereinbefore that all the cited cases pertain to interpretation of Presidency Small Cause Courts Act, 1882, in its applicability to the Small Causes Court functioning u/s 28 of the Bombay Rent Act. In the present case, the powers of the Small Causes Court constituted under the Provincial Small Causes Courts Act, 1887 are to be construed. In all the cited cases, the scope of powers to be exercised by the Small Causes Court were traced under the provisions of the Bombay Rent Control Rules framed under the Bombay Rent Act. No independent applicability of the powers of the Small Causes Court under its parent Act has been ruled.

28. In view of the unambiguous position which emerges from the cases referred to in the preceding paras, in the instant case, the procedure laid down in Rules 9-A to 9-D of the Bombay Rent Control Rules, 1948 will have to be followed by the Small Causes Court, established under the Provincial Small Causes Courts Act.

The procedure to be adopted in the instant case is governed by Rule 9-C which is already quoted hereinbefore.

29 . As the suit filed by the respondent was the suit for possession, the procedure is the procedure prescribed for a Court of first instance by the Code, i.e. the Civil Procedure Code. Section 17(1) of the Act would apply to suits falling within the sweep of Rule 9-A referred to hereinbefore. Moreover, the legislature has specifically mentioned applicability of practice and procedure of the Act in Rule 9-A and applicability of procedure prescribed for a Court of first instance. By

virtue of Rule 9-C of the Bombay Rent Control Rules, the CPC is made applicable to the suits and proceedings other than those referred to in Rules 9-A and 9-B. There is no such pre-condition mentioned in Order 9, Rule 13 of CPC and hence, as the procedure prescribed in Rule 9-C differs from Rule 9-A by virtue of the nature and amount or value of the subject matter involved in the suit. Accordingly, the proviso to Section 17(1) of the Act will not apply to the facts of the case in hand. The position is also effectively dealt by the Division Bench of this Court in Habib's case (cited supra).

30. Seen from another angle, if the contention canvassed by the respondent, that the proviso to Section 17 of the Provincial Small Cause Courts Act was applicable to the facts of the present case, is to be accepted, then, such an interpretation might result in uneven and different treatment to the different litigants depending upon the Court before whom they are litigating. Such a situation has to be avoided,

31-32. As seen from the text of Section 28 of the Bombay Rent Act, it would be clear that in greater Bombay, the Court of Small Causes established under the Presidency Small Cause Courts Act, in any area for which, a Court of Small Causes is established, then such Court, and elsewhere the Civil Judge (Junior Division) having jurisdiction in the area in which premises are situate or, if there is no such Civil Judge, the Court of Civil Judge (Senior Division) having ordinary jurisdiction has a jurisdiction to entertain and try any suit or proceeding between the landlord and tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part-II of the Bombay Rent Act applies. In other words, different Courts established under different legislations, functioning in different areas, have been conferred with jurisdiction to entertain and try suits filed under the Bombay Rent Act. In this backdrop, if different Courts are permitted to apply different set of rules, then, different litigants would be subjected to different procedure and treatment depending upon the area or the Court before whom their litigation is pending. The same might lead to uneven and different treatment to the litigants.

33. As already observed hereinabove, Section 31 provides for procedure to be followed in the suits and proceedings and, suffice it to reiterate the word "prescribed" referred to in Section 31 of the Bombay Rent Act. The word "prescribed" is defined in Section 5(9) of the said Act means prescribed by rules. If all the Courts specified u/s 28 and 29 of the Bombay Rent Act are held to be bound by the procedure prescribed by the rules, known as, Bombay Rent Control Rules, framed under the Bombay Rent Act, then only, a similar treatment to all the litigants can be extended. Looked from this aspect, if the application under Order 9 Rule 13 of CPC moved before the Civil Judge (Junior Division or Senior Division) or for that purpose before the Presidency Small Causes Court, is not required to answer the requirement of furnishing security as contemplated by proviso to Section 17 of the said Act, then why the litigant before the Court of Small Causes alone should be held liable to furnish security and answer the

requirement of proviso to Section 17 of the said Act. In order to sustain the order of the Courts below, proviso to Section 17 will have to be read as part of the Bombay Rent Control Rules which was never contemplated by the legislature. Reading of proviso in addition to the rules would only amount reading something more in the rules, which is not permissible. It is an established principle of law that the provision should not be construed in such a way that the legislature could not have intended to mean. It is also a settled principle of law that where two alternative constructions are possible, the Court must choose the one which will ensure its smooth and harmonious working and the other, which leads to uneven treatment, absurdity, confusion or friction, contradiction and conflict, should be avoided.

34. In this view of the matter, the interpretation canvassed by the learned counsel for the respondent to support the impugned order cannot be accepted. The impugned order is, therefore, needs to be set aside. Accordingly, the impugned order dated 15th December, 1989 is set aside. The application for setting aside ex parte decree is restored and the proceedings thereof are remitted back to the Additional Small Causes Court, Pune for trial and decision on merits in accordance with law, as expeditiously as possible, at any rate, within six months from the date of receipt of this judgment. Parties to appear before the said Court on 17th January 2002.

35. In the result, petition is allowed. Rule is made absolute in terms of the above order with no order as to costs.