

(1992) 03 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 3615 of 1991

C.K. Talwar

APPELLANT

Vs

M/s. Rallis India Ltd.

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 227
Easements Act, 1882 — Section 52
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : AIR 1993 Bom 1 : (1992) 2 BomCR 638 : (1992) 94 BOMLR 170 : (1993) 1 MhLj 347

Hon'ble Judges : M. F. Saldanha, J

Bench : Single Bench

Advocate : Mahesh Jethmalani and Miss Reshma Ruparel, for the Appellant;
G.K. Vora, for the Respondent

Judgement

1. Will this Court turn a Nelson's eye to a class of litigation that is unnecessarily throttling the functioning of the justice dispensation system which itself is groaning under unbearable arrears and virtually gasping for breath? For too long has it been the order of the day in and around the city of Bombay, particularly for persons in unjustified occupation of premises, to litigate virtually for decades together and use this time period as an umbrella for continuation of such illegal activities. Pendency of a litigation based on such claims invariably couched in a veneer of profoundness, are used as the justification for such wrongful retention of the premises, thereby defeating the possessory rights of the owner. In the process, it is the Courts at whom an accusing finger is pointed as the institutions that have permitted this state of affairs to flourish. The modus operandi, invariably, is the institution of one or more litigations and the filing of appeals therefrom, or the starting of parallel proceedings when one of them has failed. The present petition before me is an even more classic illustration of how judicial process is sought to be used as a cover for the perpetuation of such a

situation where the solitary plea canvassed is that dehors the merits of the case or, for that matter, even the ethics involved, the proceeding started in one Court in 1989 should be dismissed, and that it should be commenced in another Court. A solitary issue of jurisdiction canvassed in this case, in view of its far-reaching consequences in numerous proceedings of such type, requires to be decided on merits, since it has been agitated with some degree of vehemence. An application having been presented before me by the respondent-Company containing a grievance that the petitioner has been refusing to restore possession of valuable residential premises, occupation of which was permitted to him while an employee of the Company, which status had ceased since the middle of the year 1986, it did appear necessary that this petition, which has come up to the High Court at an interlocutory stage, requires immediate disposal. Inter alia, the Company contended that whereas it is required to pay an amount of Rs. 2,000/- per month to the original owner of the premises, that the petitioner ex-employee has been occupying the premises after resigning from Services of the Company, for the last 5 1/2 years without having paid a single rupee. The Company had instituted recovery proceedings before the Court of Small Causes at Bombay in 1989. The petitioner ex-employee filed this petition contending that the City Civil Court and not the Court of Small Causes was the proper forum, and the petition having been admitted, pending proceedings have been stayed and the petitioner continues in occupation, free of charge for several years to come. The facts appear gross and in order to prevent the continuation of this unsatisfactory state of affairs, the petition was taken up for hearing forthwith.

2. The petitioner before me, Mr. G. A. Talwar is an ex-Executive of the respondent, M/s. Rallis India Ltd., a large and well-established public limited Company at Bombay. The Company had acquired in January 1972 from the landlord, Flat no. 35 in Venus Apartments at Worli Sea Face, Bombay, together with a garage attached to the premises. Over the years, the Company appears to have been accepted as a tenant in respect of the premises and the rent payable thereof was mutually increased from time to time until it reached a sum of Rs. 1, 600/- per month excluding the society's bills, which come to about Rs. 550/- per month on an average. Apart from this, the Company has also been making certain payments towards repairs, etc. This flat was acquired by the Company for purposes of providing residential accommodation to its officers.

3. The petitioner before me was appointed on 15-6-1973 as a management trainee and absorbed in the managerial cadre with effect from 15-5-1974. Under an agreement dated 28th July 1978, between the Company and the officer, he was allotted the flat by the Company for residence of himself and his family members. The Officer tendered his resignation from service vide his letter dated 30-5-1986, accepted by the Company on 4-6-1986, the resignation being effective from end of August 1986. The Company, by its letter dated 21st August 1986, requested the officer to hand over the vacant possession of the premises by 31st August 1986; whereupon he wrote back to the Company on 29th August 1986 claiming tenancy in respect of the premises and refusing to hand over the

possession. Certain correspondence ensued between the parties, but the officer, taking advantage of the fact that he has been in possession of the flat continued to reside there and the Company was finally forced to file a case bearing No. 20/S of 1986 u/s 630 of the Companies Act read with Sections 406 and 408 of the Indian Penal Code against the officer in the Court of the Metropolitan Magistrate, 7th Court, Dadar, Bombay. That proceeding is still pending for the last five years. In April 1989, the Company filed a suit before the Court of Small Causes at Bombay u/s 41 of the Presidency Small Cause Courts Act, 1882, for recovery of possession as also the arrears of compensation for the use and occupation of the premises until the date of recovery of possession. The Company also prayed for certain ancillary reliefs, such as the appointment of a Receiver, etc. The Court of Small Causes granted an ad interim injunction restraining the officer from parting with possession of the premises or inducting any third party therein. At this stage, the officer who is the present petitioner, namely, the defendant to that proceeding, challenged the jurisdiction of the Court to entertain the proceedings, principally, on the ground that the decision of this Court in the case of Vishwanath v. Gandabhai 1990 Mah LJ 1145, was applicable and that, according to him, the proceeding was in the wrong Court. The limited ground canvassed was that the plaintiff-Company had styled the present petitioner as a trespasser and that in such circumstances, it was the City Civil Court at Bombay, namely, the ordinary Civil Court which could entertain such a dispute and that the jurisdiction of the Court of Small Causes, which is a forum whose jurisdiction is confined only to the limits conferred on it by special statute, was precluded from trying the dispute and, therefore, barred in law from entertaining the proceeding. The learned trial Judge by his order dated 14/28th June 1991 rejected this contention and held that the Court was competent to entertain this suit. It is against this order that the present petition has been filed. Though at an interlocutory stage, it is contended that the challenge being to the jurisdiction of the Court u/S.9, C.P.C. fundamentally attacks the institution of the proceeding and, therefore, requires determination. Inevitably, therefore, such determination would require an examination of the facts and the law and a decision on issues material to those canvassed before me. The petitioner having carried the proceeding to a higher forum shall, therefore, not be entitled to contend that the observations or findings recorded by this Court ought not to bind him in the proceedings that are still pending.

4. Mr. Jethmalani, learned Counsel appearing on behalf of the present petitioner, has contended, in the first instance, that this Court must accept the position that on and from the point of time when the petitioner ceased to be an officer-employee of the respondent-Company, that he has been styled as a "trespasser" vis-a-vis the disputed premises. He submits that the character of the proceeding is to be judged from the fact that the Company seeks to recover possession of the premises by removal of a trespasser and that in the circumstances, the Court of Small Causes is not the right forum for the institution of such a suit. He submits that the petitioner having taken up the contention that he is a tenant in

respect of the premises, would not be of any assistance to the Company because it has not conceded that position and, consequently, he cannot invoke special jurisdiction of the Court of Small Causes u/s 28 of the Bombay Rent Act. As far as the question of licensor or licensee is concerned, in which status alone a remedy contemplated u/s 41 of the Presidency Small Cause Courts Act can be invoked, it is Mr. Jethmalani's contention that the plaintiff-Company itself has at all material times styled and treated the petitioner as a trespasser, that he is not a licensee and, therefore, Section 41 of the Presidency Small Cause Courts Act would not have any application. He submits that since the jurisdiction of the Court of Small Causes has been questioned that the issue fell for the determination at a preliminary stage by virtue of the provisions of Section 9-A of the CPC and that the Court was in error in having disregarded the ratio laid down in the Vishwanath's case 1990 Mah LJ 1145 (supra) and holding that it had jurisdiction.

5. On facts, Mr. Jethmalani does not dispute the position that his client was originally allotted the premises by the Company under an agreement dated 28th July 1978. He relies on the fact that the premises were allotted to his client "during the pleasure of the Company" and he, therefore, submits that the period was not specifically limited. He relies on certain other provisions of the agreement which specifies that the petitioner was to be in exclusive use and occupation of the premises and it is his general contention that certain rights were conferred upon the petitioner by virtue of which he was entitled to reside in the premises and that the petitioner is entitled to continue in occupation by virtue of these rights independently of his being an employee of the Company. Mr Jethmalani contends that in the assertion of those rights, the question of the petitioner being an employee is not only subsidiary but irrelevant and that, in any event, where the proceeding is instituted against his client on the ground that he is a trespasser, unless it can be demonstrated on the date when the proceeding was commenced that he is a licensee at that point of time that the same cannot come within the ambit of Section 41 of the Presidency Small Cause Courts Act.

6. Mr. Vora learned counsel appearing on behalf of the Company, has seriously contested the factual position and the determination of the issue canvassed before me would require a reference also to this aspect of the case. Mr. Vora has drawn my attention to the specific reference in the agreement to the fact that the occupation of the premises was coextensive with the tenure of the services of the petitioner with the Company. He points out that even as far as the concept of exclusive possession was concerned, that under Clause 10, of the agreement dated 28th July 1978, the petitioner only had a right to reside in the premises and that the Company reserved the right to enter the same or recover possession at any time. Furthermore, he has heavily relied on the wording of clause 19 of the agreement, which reads as follows:--

"19. Nothing herein contained shall be construed as creating any right, interest,

easement, tenancy or subtenancy in favour of the employee in or over or upon the said premises or transferring any interest therein in favour of the employee other than the permission to use the said premises in accordance with the terms and conditions of this agreement. The Company shall be in exclusive possession and full control and charge of the said premises at all times and it shall at all times have free and unobstructed access to the said premises."

In addition to this, Mr. Vora submits that clause 17 of the said agreement is unambiguous in so far as it enjoins on the officer employee to vacate the premises and restore possession on being asked to do so by the Company regardless of whether he has ceased to be in employee and failure to do so would relegate the employee to the position of a trespasser empowering the Company to adopt appropriate steps for his removal.

7. To my mind, the interpretation of the agreement sought to be canvassed by the petitioner is not only hollow, contrived, farfetched and thoroughly unacceptable, but also lacks any bona fides and honesty. It has unfortunately become the order of the day that persons who are permitted occupation of premises to actually disregard the sanctity of a written agreement and what is specified therein and something which they had solemnly agreed to abide by at the point of time when they were put in possession. Whereas the agreement without any shadow of doubt permits the officer to use and occupy the premises only for such period as the Company allows him to do so and whereas it is further clear beyond any shadow of doubt that under the agreement between the parties no right, title or interest would devolve on the petitioner, in all solemnity a frivolous and unsustainable plea of tenancy was canvassed and the petitioner has in defiance of all canons of legality continued in occupation of the premises for the last five years. It is further significant in this case that the petitioner has merely stated that he is a tenant, he has not even so much as approached the Court of Small Causes for a declaration to that effect, which speaks volumes for the hollowness of the claim of tenancy. The position would not have been any different, nor would it have been better, if the petitioner had indulged in the familiar exercise of instituting a declaratory suit which would inevitably take about 10 years for a decision in the first instance and to have raised a specious plea that the Court should protect his right through that period because "his chances of success in the proceedings are bright". The Courts have been virtually choked up with exercises of this type which have little justification in law and which serve the purpose of subverting the rule of law. In this case, however, the petitioner preferred to remain in possession and enjoy the use and occupation of the premises free of charges, whereas the rightful occupant, namely, the Company, was on the one hand deprived of the premises and on the other continues to pay the rent and outgoings for the same on behalf of the petitioner ex-employee with whom the Company virtually has nothing to do. What emerges, however, from a perusal of the agreement is that the Company did confer on the employee officer a licence which was of a temporary duration and which was revoked at will, and which did not create any rights whatsoever in the

petitioner as far as the premises were concerned. The record further shows that on termination of that licence, i.e. on 28-6-1988, that the petitioner refused to restore possession of the premises. On and from that date, therefore, the petitioner is right in contending that he is no longer a licensee of the Company which, in its turn, was not, therefore, unjustified in styling him as a trespasser in the plaint. One cannot view the status mentioned in isolation of the totality of the cause of action while considering the arguments canvassed by Mr. Jethmalani. Cases of this type will have to be distinguished from situations wherein the adverse party has illegally and unlawfully entered into the premises either by force or clandestinely, i.e., where there was no licence conferred at any earlier point of time and situations of the present type where admittedly the licence was once in existence and was terminated. Indeed, in every proceeding u/s 41 of the Presidency Small Cause Courts Act the cause of action arises only after such termination and on the refusal to restore possession and the defendant to such proceeding, therefore, though styled as a trespasser is, in fact, an ex-licensee or a licensee who is holding over. This distinction is material because the fallacy in the arguments canvassed by Mr. Jethmalani would thereby be apparent.

8. The main plank of Mr. Jethmalani's arguments is that the present case is squarely covered by the ratio of the judgment in Vishwanath's case 1990 Mah LJ 1145 referred to supra. Agarwal, J. in that case, after a detailed analysis of the provisions of Section 52 of the Easements Act, 1882, Section 41 of the Presidency Small Cause Courts Act, 1882 as also Section 28 of the Bombay Rents/Hotel and Lodging House Rates Control Act, 1947 upheld the contention that the "proceedings instituted against a trespasser could correctly be presented for adjudication to the City Civil Court and not to the Court of Small Causes. Mr. Jethmalani submits that in the present case, the plaintiffs themselves have approached the judicial forum alleging that the present petitioner is a trespasser and that if there were any ambiguities about his status that clause (17) of the agreement dated 28-7-1978 removes this cloud completely. He further draws a parallel between this case and the one before Agarwal, J. by pointing out that in the year 1989, when the present suit was instituted before the Court of Small Causes, that it was not even the plaintiffs' case that there was any payment forthcoming from the present petitioner for the use and occupation of the premises. Enlarging on this point, he relies on the agreement which does not refer to any licence-fee or compensation and, therefore, contends that the occupation was gratuitous.

9. Before proceeding further, I need to record that Mr. Vora very vehemently contested the correctness of this last aspect and rightly so. It is incorrect to contend that the facts of the two cases are identical. Whereas in Vishwanath's case 1990 Mah LJ 1145 the occupant was a domestic servant who had been permitted virtually as a gesture of goodwill to occupy the disputed premise; there was never any formal agreement nor was there any consideration for such occupation. The facts of the present case are entirely different in so far as the petitioner had to pay 10 percent of his salary for the occupation of the premises

which was deducted at source, in addition to which one need to note that this facility was conferred on him only because he was rendering service to the Company. The facility of being provided with residential accommodation was offered to him in return for his job functions, which is consideration apart from the actual deduction from his salary which was much less than the normal market rate of the premises. The fact that these premises were given to him at a subsidised rate would further link the facility entirely and exclusively to a fall out of his services with the Company and would therefore, conclusively establish that the respondent-Company is right in contending that it was one co-extensor with his tenure as an employee of that Company. Under these circumstance, the ratio of the judgment in Vishwanath's case 1990 Mah LJ 1145 cannot and will not apply to the facts of the present proceedings.

10. Mr. Jethmalani placed reliance on certain other decisions in support of his contention that the Court of Small Causes would have no jurisdiction to entertain the present proceedings. To start with, he also relied on a Full Bench decision of this Court in the case of Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, , wherein Chainani, Chief Justice (as he then was), summarized the position in law as follows (at page 181 of AIR):--

"The position therefore is that in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Whatever may be the form of relief claimed, if on a fair reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claim in substance relates to recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone that will have jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of the suit in the Special Court will depend on the decision of the Court on that issue. Similarly if the plaint does not allege the relationship of landlord and tenant and no claim or question arises out of the Act or any of its provisions, then it will be the ordinary civil Court and not the Special Court that will have jurisdiction to entertain the suit."

11. Mr. Jethmalani contends that applying this test to the Plaint in these proceedings where it is clearly pleaded that the present petitioner is "a trespasser" that the irresistible conclusion is that the cause of action could only be adjudicated upon by the City Civil Court. To my mind, this submission is virtually a misreading of the judgment. It is the plaint as a whole which has to be construed and not the terminology or, for that matter, a few stray references. The narration set out in the Plaint conclusively indicate that there existed a revocable licence between the company and the petitioner for consideration and that on termination of this licence, the present petitioner had defaulted in his obligation to restore possession. That Section 41 of the Presidency Small Cause

Courts Act is the appropriate remedy is more than fully justified in these circumstances.

12. Mr. Jethmalani thereafter relied on a decision of the Supreme Court in the case of *Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others*, . In that case, where a recovery proceedings under the Bombay Rent Act against defendants Nos. 1 to 3 had failed and the Court passed a decree in the same proceedings against defendant No. 4, who claimed to be a subtenant, the Supreme Court set aside the order on the ground that the Court had come to the conclusion that the 4th Defendant was a trespasser and not entitled to the protection of the Bombay Rent Act. It is material to point out that in this case the 4th defendant was an outsider who had entered into the premises and was seeking to claim certain rights. The Supreme Court clarified that the dispute between a landlord and tenant, namely, between the plaintiffs and defendants Nos. 1 to 3, was within the jurisdiction of the Court of Small Causes exercising powers u/s 28 of the Bombay Rent Act, but that this jurisdiction did not cover a proceeding against a third party namely, the 4th defendant, who was held to be a trespasser. Once again, this decision cannot be of such assistance to the present petitioner because this is not a suit filed under the Bombay Act. The present proceedings instituted u/s 41 of the Presidency Small Cause Courts Act can only take cognisance of the proceedings instituted between a licensor and a licensee for recovery of Immovable property situated in greater Bombay provided the disputant conforms to that status. I have already held that the Company was a licensor and the petitioner was a licensee by virtue of the agreement dated 28-7-1978, and under these circumstances, to my mind, the proceeding is within the scope of Section 41 of the Presidency Small Cause Courts Act.

13. Reliance was also placed by learned Counsel for the petitioner on a decision of the Supreme Court in the case of *Natraj Studios (P) Ltd. v. Navrang Studios*, AIR 1981 C 537, wherein D. Chinnappa Reddy. J. (as he then was) has summarized the position in law vis-a-vis a special jurisdiction conferred on the Court of Small Causes as follows (at pp. 543-44 of AIR) :

"This 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 the 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 straightway 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."

Mr. Jethmalani submits that the Supreme Court has very clearly circumscribed the scope of the proceedings before the Court of Small Causes, which is a Court of special jurisdiction. He contends that the present dispute, which on facts alleges that the petitioner is a rank trespasser and is in wrongful occupation and possession of the Company's premises and needs to be stopped from continuing in such illegal acts, is neither a proceeding between a landlord and tenant nor is it, for that matter, a proceeding between a licensor and licensee, and that if one excludes these two situations, the jurisdiction of the Court of Small Causes is completely ousted. One needs to take note of the fact that Mr. Jethmalani's client had initially contended that he was a tenant, though he has taken no steps in furtherance of that contention, obviously realising the futility thereof. The fact that when this plea was taken up, admittedly, the petitioner was still a licensee cannot be disputed and even in the subsequent correspondence, the company had been insisting that he honours the agreement and that it is on the basis of that agreement that he was asked to restore possession of the premises. The Company is a tenant in respect of that flat, its status has not been extinguished and under these circumstances the position of the petitioner in law could only be that of a person in occupation under a revocable licence. Section 41 of the Presidency Small Cause Courts Act has been placed on the statute book to provide reliefs in such cases and the Court of Small Causes is the correct the competent forum for disputes relating to such reliefs and, therefore, to my mind, Mr. Jethmalani's plea that the City Civil Court is the correct forum is completely erroneous and misconceived.

14. Next, Mr. Jethmalani relied on a decision of the Supreme Court in the case of *Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others*, .

That was a proceeding where a society had proceeded u/s 91 of the Maharashtra Co-operative Societies Act against a licensee who was occupying a flat as a tenant co-partner member of the society since 1957. The Supreme Court held that u/s 15A read with other cognate provisions of the Bombay Rent Act, the licensee is a deemed tenant that he can be evicted only under the Bombay Rent Act and that a proceeding u/s 91(1) of the Maharashtra Cooperative Societies Act was not maintainable. What needs to be taken note of is that the Supreme Court in this case found that the basis of the proceedings, namely, the charge that the respondent was a mere trespasser and was, therefore, liable to be evicted from the society's premises was without substance in so far as the law had conferred on him certain rights under the Bombay Rent Act by virtue of statutory amendments. In other words, the Co-operative Court itself had been misled on facts and, therefore, entertained the proceedings. It is true that in this judgment, the Supreme Court has laid down that where a statute confers a special jurisdiction, it is that Court alone which can exercise it. To my mind, correctly construing, the ratio of this decision would support the view that the present proceedings had rightly been instituted before the Court of Small Causes. The reason for it is that the present petitioner is not "a mere trespasser" but, as indicated earlier, a licensee, who has refused to vacate and is holding over. Consequently, on these facts, the appropriate legal remedy available to the Company is by way of an application under S.41 of the Presidency Small Cause Courts, Act, and for that matter it would be incorrect to approach the City Civil Court when the special statute provides a specific remedy before the Court of Small Causes.

15. Mr. Vora, learned counsel appearing on behalf of the respondent-Company, has started by submitting that the present petitioner is merely litigating to gain time; that the present petition is totally devoid of substance and that the sole object of approaching this Court is in order to stall the passing of a decree by the Court of Small Causes. Mr. Vora contends that the petitioner has no defence whatsoever. He goes to the extent of submitting that apart from legalities, even ethically and morally, it would be difficult to conceive of graver injustice to his clients who are badly in need of accommodation and are deprived of using it for their other employees because the petitioner is refusing to restore the same. Apart from distinguishing the facts and the ratio in Vishwanath's case referred to by me supra, Mr. Vora relied on a judgment of Pendse, J. in the case of Eknath Vithal Ogala v. Mansukhlal Dhanraj Jain 1988 Man RCJ 258. This case raised a ticklish issue with regard to the question as to which was the competent forum to entertain a suit for an injunction in a proceeding between a licensor and a licensee, whereas Guttal, J. had taken the view that by virtue of the provisions of S.41 of the Presidency Small Cause Courts Act that it is that Court alone which can exercise jurisdiction, Sawant, J. (as he then was) held that if the application was for injunction simplicitor that it was the City Civil Court which had jurisdiction. A difference of opinion having arisen, the matter was referred to Pendse, J. and it is the third judgment of Pendse, J. that really concluded the

controversy. After considering the various provisions of law and several decisions on the point, Pendse, J. has conclusively held that all such proceedings could only be directed to the Court of Small Causes and that the City Civil Court would not have jurisdiction in the matter. This virtually settles the controversy.

16. Mr. Vora then drew my attention to a decision of this Court in the case of Dr. D. D. Mirchandani v. Sadanand Makiral 1988 Mah RCJ 250. In this case, where the licenses had refused to vacate principally on the ground that by virtue of the amendment of 1973 that there was a subsisting licence as on 1-2-1973, conferring thereby protection on the defendant, that the action under S. 41 of the Presidency Small Cause Courts Act was still maintainable. Mr. Vora relies on this judgment for purposes of establishing that merely because a plea of tenancy may be canvassed and he adds the word "dishonestly" that it would not change the complexion of the proceedings because it is the cause of action pleaded by the plaintiffs that is required to be tested and not the contentions raised by the defendant. Guttal, J. observed that it was open to the Court of Small Causes in a proceeding under S.41 of the Presidency Small Cause Courts Act to examine the genuineness and/or otherwise of that plea and to grant the relief, if the defence was devoid of substance. In the present proceeding, which is on similar facts, the plaintiff-Company is justified in having commenced the proceedings under S. 41 of the Presidency Small Cause Courts Act and it is for the trial Court to examine the material placed before it and to adjudicate the matter accordingly, the rest of the judgment essentially deals with the jurisdiction of the High Court in such matters where there is a dispute on questions of fact and the scope of the examination, if any, that is permissible under Art. 227 of the Constitution, which is something that I need not go into at this stage because that was a proceeding emanating out of a final order.

17. In view of this position, my finding is conclusively and unequivocally to the effect that the trial Court was justified in entertaining the present suit and that the order impugned in this petition is not liable to be disturbed.

18. Mr. Vora, at this stage, made an impassioned plea to this Court for expedition of the trial on the ground that his client, the Company, is very hard-pressed because of the fact that they have virtually lost the use of this flat for several years and that there are virtually over ten thousand such cases pending in the city of Bombay where ex-employees of Companies are wrongfully continuing in occupation of premises and litigating endlessly through all sorts of frivolous proceedings. He states that in this instance, even criminal proceedings instituted u/s 630 of the Companies Act have been dragged on for five long years and that, consequently, this Court should direct expeditious disposal. As far as the criminal proceedings are concerned, since they are not the subject-matter of this proceeding, no orders are permissible on this petition. Mr. Vora is on stronger ground as far as the present suit is concerned. Mr. Jethmalani has brought to my notice the fact that if the Company was, in fact, so hard-pressed that they ought not to have waited for almost three years before moving the Court of Small

Causes. Mr. Vora states that the Company was hopeful of securing the possession of the premises in the Section 630 proceedings and it was after a frustrating experience in the criminal Courts that his clients were required to institute one more proceeding before the Court of Small Cause. He is, perhaps, justified when he point out that a large amount has been spent by the Company on the maintenance of the flat and on paying the outgoings and that this state of affairs ought not to be permitted to go on for much longer merely because the dispute is not adjudicated upon. The controversy is now considerably narrowed down and therefore, having regard to the fact that the hearing of the proceeding before the trial Court will not take much time, this is a fit case in which an order for expedition is justified.

19. The petition, consequently, fails and the same stands dismissed with costs. The interim orders to stand vacated. The suit before the Court of Small Causes is expedited and the learned Judge shall dispose of the same on a priority basis, as far as possible by 30-9-1992.

20. Petition dismissed.