

(1928) 11 BOM CK 0001

In the Bombay High Court

Case No : Civil Revision Application No. 292 of 1927

Gopalji Umersey

APPELLANT

Vs

Devji Naranji Thakkar

RESPONDENT

Date of Decision : 22-11-1928

Acts Referred:

Bombay Rent Act, 1918 — Section 17
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1929) 31 BOMLR 387 : (1929) ILR (Bom) 432 : 118 Ind. Cas. 545

Hon'ble Judges : Patkar, J; Baker, J

Bench : Division Bench

Judgement

Patkar, J.—In this case the plaintiff landlord brought a suit against the defendant for ejectment in the Court of Small Causes. The defendant was occupying a room on the second floor the rent of which was Rs. 7 which was subsequently raised to Rs. 17. The defendant contended that the suit could not be proceeded with as the plaintiff had not annexed to the plaint a copy of the order in force determining that the premises were not small premises or fixing their standard rent u/s 17 of Bombay Act VII of 1918. The plaintiff contended that structural alterations had been effected in the building in 1926 and 1927 with the result that the identity of the building was changed and the premises became new premises exempt from the operation of the Rent Act. The trial Judge was of opinion that the Controller u/s 4 had no power to determine whether the premises were old or new though he may have to do so incidentally. The question as to whether the premises were old or new w&s referred by consent to Mr. B.S. Sanjana as commissioner. The commissioner visited the premises, took evidence and held that the premises in question were new. The Small Cause Court Judge who tried the case, accepted the report and ordered the defendant to vacate by October 31.

2. It is urged on behalf of the defendant that the lower Court had no jurisdiction to decide the case but ought to have rejected the plaint u/s 17, Clause (2), on the ground that the plaintiff had not annexed to the plaint a copy of the order in

force determining that. the premises were not small premises or fixing their Standard rent. It is urged on the other hand that the defendant consented to the appointment of Mr. Sanjana as commissioner to decide the question whether the premises were old or new, that the Small Cause Court had jurisdiction to entertain the suit for ejectment, and that as there was no order passed by the controller u/s 4, there was no order in force a copy of which could be produced with the plaint u/s 17.

3. u/s 4 of the Rent Act, VII of 1918, the controller has the power, after such enquiry as he may think fit, (a) to determine whether any premises are or are not small premises, and (b) from time to time to fix the standard rent of the premises. "Small premises" have been defined by Section 2, Clause (b), as any premises the standard rent of which does not exceed twenty rupees a month. u/s 17 of the Bombay Rent Act, VII of 1918, in every suit for rent or ejectment in respect of any premises of which the monthly rent does not exceed thirty rupees, the plaintiff shall annex to the plaint a copy of the order in force determining that the premises are not small premises or fixing their standard rent, and under Sub-section (2) if the plaintiff fails to comply with the terms of Sub-section (1) the plaint shall be rejected. The monthly rent in Sub-section (1)(a) of Section 17 does not mean standard rent. See Krishnarao Khanderao Parelkar Vs. Virji Peraj, . If the premises in suit were governed by the Rent Act, the monthly rent of the premises being Rs. 17 it would be necessary for the plaintiff to annex to the plaint a copy of the order in force determining that the premises were not small premises or fixing their standard rent.

4. It is urged, however, that there is no order of the controller in existence, and therefore, the plaintiff could not annex to the plaint a copy of the order in force. An order in force means an order which has not been set aside in appeal u/s 6 of Bombay Rent Act, VII of 1918. If an order is not in existence, the plaintiff ought to have applied to the controller for a certificate u/s 4(1)(a) of the Bombay Rent Act, VII of 1918. Under the rules relating to the subsidiary Rent Act, VII of 1918, made u/s 13 and published in the "Bombay Government Gazette" 1923, Part I, pp. 368-370, dated February 22, 1923 provision is made for fees to be paid on an application for fixing or altering the standard rent u/s 4(1)(b), and also for fees on an application for a certificate of the controller u/s 4(1)(a). The rules, therefore, contemplate an application to be made to the controller to make an enquiry u/s 4. The plaintiff, therefore, must annex to the plaint a copy of the order after making an application to the controller to determine whether the premises are or are not small premises or to fix their standard rent, u/s 4(1)(a) and (b).

5. The next question is whether the failure to annex to the plaint a copy of the order u/s 4(1)(a) deprives the Small Cause Court of the jurisdiction to decide the suit or is an irregularity which can be waived by the defendant. It is urged on behalf of the plaintiff that the Small Cause Court had jurisdiction to decide the suit for ejectment, and that the defendant had consent-8d to the appointment of

the commissioner to decide the question whether the premises were old or new, and therefore, must be considered to have waived the objection based on the failure to annex to the plaint a copy of the order u/s 4(1)(a).

6. u/s 41 of the Presidency Small Cause Courts Act, the suit for ejectment was cognizable by the Small Cause Court as the annual rent did not exceed Rs. 2,000. In a similar case, *Krishnarao v. Virji*, where the defendant was occupying the premises but they were not the same premises but different as they were let for the first time in October 1925, it was held that the point with regard to Section 17 of the Bombay Act, VII of 1918, did not make it one of jurisdiction, and that even if the lower Court arrived at a wrong conclusion of fact or law, there would be no ground to interfere in revision u/s 115 of the Civil Procedure Code. It might amount to an irregularity in procedure in the exercise of its jurisdiction. The lower Court had jurisdiction over the subject matter, but in the exercise of the jurisdiction a particular rule of procedure had to be followed, e. g., obtaining leave of the Collector in a suit to which Sections 4 and 6 of the Pensions Act, XXIII of 1861, are applicable, (see (1881) L.R. 9 I.A. 8 (Privy Council) or leave u/s 17 of the Civil Procedure Code, 1882 (see *Narayan Shankar v. Secretary of State* I.L.R.(1906) . 30 Bom. 570 or consent of the Governor General in Council for the institution of a suit against a ruling chief u/s 433 of the Civil Procedure Code, 1882 (see *Ledgard and another v. Bull* where it was held as follows (p. 145):?

When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. But there are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit. The present case does not come strictly within these authorities, because the Defendant's plea was stated before issue was joined on the merits, and, in reliance of that plea, he objected to the case being tried, and withheld his objections to the validity of the patent. It is, therefore, necessary to consider the facts from which their lordships are asked to infer that the Defendant did, is point of fact, waive all objection to the competency of the suit, and engage that the cause should be tried on its merits by the District Judge.

7. In the present case, the objection based on Section 17 of the Bombay Rent Act, VII of 1918, was taken at the outset by the defendant, and though he consented to the appointment of Mr. Sanjana as a commissioner to try the question whether the premises were new or old, he cannot be said to have waived the objection based on Section 17. I think that if the premises in suit were governed by the Rent Act, the lower Court ought to have insisted upon the

production of an order in force u/s 17 of the Bombay Rent Act, VII of 1918. If there was no order in existence, the plaintiff ought to have applied to the controller and got an order and annexed it to the plaint, and though the objection based on Section 17 of the Rent Act may not amount to want of jurisdiction in the Small Cause Court it would, in my opinion, amount to material irregularity in the exercise of its jurisdiction.

8. The principal question, however, in the case is whether the premises in suit are governed by the Rent Act. The word "premises" occurring in Section 17(1) (a), though not defined in Bombay Act VII of 1918, is defined in the principal Act, Bombay Act II of 1918, and has the meaning assigned to it in that Act. u/s 2(1) (b)(ii) of the principal Act, Bombay Act II of 1918, the word "premises" does not include any building or part of a building or land which has not been at any time let as aforesaid before the 1st day of October 1922. It has been found by the Court that these premises were altered in 1926, and the report of the commissioner is that the buildings have lost their identity and that they are new premises. In *Chapsey Umersey v. Keshavji Damji* I.L.R.(1920) . 45 Bom. 744 it was held that the godown, which was reconstructed, was for all practical purposes a new godown and the standard rent for the same was the rent at which it was "first let" after January 1, 1916. In *Ibrahim Fazalbai Vs. Jan Mahomed Rahim*, it was held by Madgavkar J., following the decisions in *chapsey Umersey v. Keshanji Damji* and *Stochham v. Easton* [1924] 1 K.B. 52 that where a landlord entirely reconstructs a wall which has fallen down and makes extensive structural alterations in the house at considerable cost, the premises so renewed are new premises which fall within Section 2, Clause (a)(ii), of the Bombay Rent (War Restrictions) Act, 1918, and he is at liberty to charge any rent for letting out the premises. The reasoning underlying the above decisions would equally apply to Section 2, Clause (b)(ii), of Bombay Rent Act, II of 1918.

9. The lower Court having accepted the report of the commissioner and found that the premises were new premises as they were reconstructed in 1926, they are not governed by the Bombay Rent Act. The word "premises" in e, 17 of the Bombay Rent Act, VII of. 1918, would not include the premises in suit, as in their present condition they were first let after October 1, 1922. In the present case, the whole house including the second floor was entirely changed and lost its identity. The finding of the lower Court, based on the evidence and the report of the commissioner, that the premises in suit were new premises must be accepted in revision. We think, therefore, that Section 17 of the Bombay Rent Act does not apply to the premises in suit.

10. We, therefore, discharge the rule with costs.

11. The defendant should vacate on or before December 22, 1928.

Murphy, J.

12. The Court of Small Causes in Bombay passed an order of eviction against the applicant on September 2, 1927, in suit No. 17126 of 1927 : and applicant

challenges its correctness in revision.

13. He alleges that he has been occupying, from time to time, a room on the second floor of house No. 55 in Guncarriage Street, Colaba, formerly at a rent of Rs. 7 per mensem and latterly at Rs. 17 per mensem. The opponent, who farms the rents of this building, served applicant with a notice to vacate, and in due course filed the suit which ended in the order to vacate against the applicant.

14. At the trial, the applicant pleaded that there being no order annexed to the plaint in the terms of Section 17 of the Bombay Rent Act (VII of 1918), determining that the premises were not "small premises" and fixing a standard rent, the suit could not be proceeded with. The opponent pleaded that extensive structural alterations having been effected in 1926, the premises were thereby converted into "new" ones, and consequently that the Rent Act did not apply.

15. On these allegations the Court appointed a commissioner to determine whether the premises were old or new, and adopting the commissioner's report, passed the order which aggrieves the applicant.

16. The applicant's point is that since the monthly rent of the premises does not exceed Rs. 30 the Court had no jurisdiction to entertain the plaint, which it should have rejected, u/s 17, Clause 2, of the Act.

17. At the outset, the learned Judge of the Small Cause Court recorded an opinion that the controller, u/s 4 had no power to determine whether the premises were old or new, and then by consent appointed Mr. B. S Sanjana, commissioner, to inquire into this point.

18. It was on his report that an order was passed, to the effect that if was confirmed, and that applicant was to vacate by October 31, 1927.

19. Looking to the frame of Act VII of 1918, it appears to me that the intention, broadly speaking, was to have the rents of all "small premises", within the defined meaning of that expression, and where there was a dispute, fixed by the controller on the application of either party?see Section 2(d), for the definition, and Section 4(I)(a) and (b), for the determination of the two points, whether the premises are, or are not, "small premises," and if they are for determining the standard rent.

20. The sections of the Act following Section 4 provide for a certain oase (Section 5), for determining objections (Section 6), for a penalty for receiving rent in excess of the standard rent (Section 7), for excluded premises (Section 7 A), for a penalty for disturbance of easements (Section 8), for the recovery of excess payments (Section 9), and for the accrual of rent (Section 10). Sections 11 and 12 then confer certain legal powers on the controller, Section 13 gives power to make rules, and Section 14 lays R. 60. down that the controller is not a Court, while Section 15 bars legal proceedings in certain matters. Sections 16 and 17 appear to be connected. Section 16 forbids the issue of a distress warrant, unless the person applying for it produces a copy of an order in force, either

determining that the premises are not small premises, or that the standard rent has been fixed. In such cases the production of the order is a condition precedent. Similarly, Section 17(1), with which we are concerned, prescribes that, in certain cases, including that of a suit for ejectment out of premises rented at less than Rs. 30, there shall be annexed to the plaint a similar order.

21. Sub-Section 2 provides that if the plaintiff fails to comply with the terms of the Sub-section (1) the plaint shall be rejected.

22. On these facts, what is the effect when no order from the controller has been applied for?

23. I think the intention clearly was that the production of an order from the controller should be a condition precedent in this case also, and that failure to fulfil it invites the penalty provided in Sub-section (2), and consequently that the suit should have been dismissed, unless it could be shown that the "premises" were new, and so did not come within these provisions of the Act; and this view is confirmed by the provision in Sub-section (3) as to the effect of a rejection of the plaint under Sub-section (2). The next question is whether these premises are "new", or not. It is not absolutely clear from the report that the applicant's own room has been altered, but there is no doubt that the whole building has been remodelled and modernized and provided with better amenities, in which the applicant must be participating, and in the circumstances it can, I think, reasonably be argued that the reconstruction amounts practically to a rebuilding of the whole house.

24. This being so, it does not appear to me that there is any case for revision, and I agree that the application must be dismissed with costs.