
(1983) 06 BOM CK 0014

In the Bombay High Court

Case No : Misc. Civil Application No. 5 of 1983

Kalkhusru Nanabhoy Bharucha and Others

APPELLANT

Vs

Doss Maneckshaw Bharucha and Others

RESPONDENT

Date of Decision : 16-06-1983

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 62
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1983) 2 BomCR 277

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : K.S. Cooper, I.M. Chagla and F.D. Damania, for the Appellant; M.S. Sanghvi, instructed by Minocher Hiralal and Co., for the Respondent

Judgement

S.C. Pratap, J.—This is a petition for transfer to this Court of a suit being R.A.D. Suit No. 796 of 1983 filed by respondent No. 1 herein under the provisions of the Bombay Rent Act in the Court of Small Causes at Bombay and for a direction that on transfer the said suit should be treated as a suit filed on the Original Side of this High Court under Rule 62 of the High Court (Original Side) rules. The prayer for transfer has been made by invoking Clause 13 of the Letters Patent as also the provision of the Code of Civil Procedure.

2. The dispute relates to the estate of one Bai Navajbai D. Bharucha who died at Bombay on 24th May, 1918 leaving her last Will and Testament dated 6th March, 1912. Probate of the said Will was obtained by all the three executors on 3rd July, 1924. Unfortunately, all the executors expired without having fully administered the estate in question. Thereafter, petitioner No. 1 herein---one of the residuary legatees under the aforesaid Will---applied for and was granted in the year 1965 Letters of Administration de bon is non of the property and credits of the deceased Bai Navajbai which comprised of two immovable properties viz., "Bharucha Bungalow" and "Bharucha Building" situated at Gildar Lane, Tardeo, Bombay.

3. The respondents herein, who were donees and claiming under the Deed of Gift dated 4th October, 1956 of the 1/5 the share of their late father Maneckshaw (an executor and one of the residuary legatees of the Will of the said Bai Navajbai) filed in September 1968 Suit No. 640 of 1968 on the Original Side of this High Court against petitioner No. 1 herein, who was the Administrator de bon is non as also against petitioners Nos. 2 to 4 herein. This suit was for administration of the estate of Bai Navajbai by and under the orders and direction of this Court. There was inter alia a prayer for sale of the aforesaid two properties.

4. When this Suit No. 640 of 1968 came up for hearing in January 1983, attention of the Court was invited to the fact that out of the two immovable properties, one, viz., Bharucha Bungalow had already been sold and conveyed to petitioner No. 1 herein and that only the other property viz., Bharucha Building remained to be sold. The Court was also informed that this building comprised of ground and two storeys and that the ground floor only was in occupation of a tenant and the remaining portions inter alia the first and second floors were in occupation of the petitioners and respondent No. 1 herein who, according to the petitioners, were residing therein only as residuary legatees or persons claiming through them having no other right, title and interest. It was, however, contended on behalf of respondent No. 1 herein that he, respondent No. 1, was a tenant of the second floor of the said Bharucha Building. Respondent No. 1 was thereupon directed to file affidavit regarding his alleged claim of tenancy. Affidavit was accordingly filed. The same was, however, found not to be fully adequate or satisfactory. Respondent No. 1 was then directed to file a suit in an appropriate manner under the Rent Act in the special Court constituted under said Act. Complying with the said direction, respondent No. 1 filed R.A.D. Suit No. 796 of 1983 in the Court of Small Causes at Bombay against petitioner No. 1 herein, the Administrator.

5. When the Court seized of the administration suit was informed that the aforesaid declaratory suit (thereinafter the said suit) has been filed under the Rent Act by respondent No. 1, the executor was given liberty to apply on the appellate side of the High Court for transfer of the said suit to the Original side of this Court. Executing the said liberty, the present petition for transfer has been filed.

6. Two question arise for determination viz.,

(1) Whether this Court has got jurisdiction to transfer to this Court a suit under the Rent Act filed in the Court of exclusive jurisdiction ? and

(2) If such jurisdiction exists, is this a case where an order of transfer accordingly should be made ?

7. Now, on the first question, Mr. K.S. Cooper, learned Counsel for the petitioners, invited my attention to a Division Bench ruling of this Court in *Kavasji Pestonji Dalal v. Rustomji Sarabji Jamdar and other* AIR 1949 Bom 42, which, according to him, concludes the said question in favour of the petitioners

Mr. M.S. Sanghvi, learned Counsel for the respondents, vehemently contended, however, that, was not so. Going through this ruling I must say that the submission of the learned Counsel Mr. Cooper is correct and deserves to be upheld. It has inter alia been held in Kavasji's case supra that section 21 of the Rent Act does not affect the power given to the High Court under its extraordinary original civil jurisdiction under Clause 13, Letters Patent, to remove to itself and to try and determine any suit falling within the jurisdiction of the Rent Act as also its revisional powers u/s 115 of the CPC both of which (powers) are continued as before and in no way affected or modified. It would in this context be best to extract paragraph 4 from the judgment of the learned Chief Justice Mr. M.C. Chagla:

"As I read section 28, it deals with original suits or applications between a landlord and a tenant and this section requires that they have to be filed either in the Court of Small Causes in Greater Bombay or in the Court of the Civil Judge (Junior Division) elsewhere. Therefore, it is clear that as far as the High Court is concerned, where it had jurisdiction before to entertain such suits, proceedings or applications, that jurisdiction has been taken away, Court of Small Causes and the Court of the Civil Judge (Junior Division) to deal with any claim or question arising out of the Act or any of its provisions refers only to my mind to such claims or question arising in suits, proceedings or applications. What is, therefore, affected is the ordinary original civil jurisdiction of this Court. This argument receives further support from considering the provisions of section 29 which deals with appeals while section 28 deals with original hearing. It is to be noted that any revision that may lie from any order or decree passed by the Court of Small Causes or the Court of the Civil Judge (Junior Division) is not barred under the Act and, therefore, it is again clear that the revisional power of the High Court has in no way been affected. Both the Court of Small Causes and the Court of the Civil Judge (Junior Division) are courts subject to the superintendence of the High Court and the power given to the High Court under Clause 13, Letter Patent, to remove and to try and determine any suit falling within the jurisdiction of either of these courts also remain unaffected. To sum up, the High Court has ceased to possess ordinary original jurisdiction with regard to suits between a landlord and tenant which were cognisable by it under Clause 12, Letters Patent, but its extraordinary original Civil jurisdiction under Clause 13, Letters Patent, and its revisional powers u/s 115 of the Code or otherwise continued as before and have been in no way affected or modified. To my mind, the contention of Mr. Seerval that this High Court is debarred from dealing with any claim or question arising out of the Act or any of its provisions, however, such claim or question may arise or in whatever proceeding, is untenable. "To deal with such claim or question" must be read with reference to "any such suit, proceeding or application", and the prohibition only applies to "such suit, proceeding or application". The legislature has provided on prohibition "against the High Court dealing with such claim or question otherwise than in the exercise of its ordinary original civil jurisdiction. The very fact that u/s 50,

execution proceedings and appeals are allowed to continue before the High Court, if they were already pending , clearly shows that the prohibition is not a total prohibition but only of a restricted character".

Tendolkar, J., who was a member of the said Bench, has, in his concurring judgment, observed thus :

".....I do not think that there is anything in Act (L VII [57] of 1947) to restrict the extraordinary original civil jurisdiction which the High Court enjoys under Clause 13 of the Letters Patent. Under that clause the High Court has jurisdiction to transfer to itself for trial a case pending before any Court which is subject to its judicial superintendence. The Small Causes Court is one of such Court; and I have no doubt, therefore, that the High Court has under its extraordinary original civil jurisdiction power to transfer to itself for trial a case pending before the Small Causes Court and arising out of Act (LVII [57] of 1947) i.e. the Rent Act)".

The emerging position thus clearly is in favour of Mr. Cooper's contention that this Court's power to transfer under Clause 13 of the Letters Patent as also under the CPC remains unaffected. Distinction between Clause 12 of the Letters Patent, which relates to ordinary original civil jurisdiction, and Clause 13 of the Letters Patent relates to extraordinary original civil jurisdiction, has been succinctly brought out in the aforesaid ruling. Thus it is, that there is a contrary judgment of a learned Single Judge of the Calcutta High Court in P.K. Ghosh Vs. Mrs. K. Dutt, . However, so far as this Court is concerned, the question is no longer *res integra* . The ruling in Kavasji's case binds me. And it concludes the issue in favour of the petitioners. I, therefore, hold that there does exist in this Court jurisdiction to transfer to this Court a suit under the Rent Act for being heard and tried by this Court. 8. Question next arising is whether this is a case where the said jurisdiction should be exercised in favour of the petitioners. On this aspect however, I am unable to agree with the learned Counsel Mr. Cooper. Jurisdiction under Clause 13, Letter Patent, is expected to be and should be exercised with great caution and only under exceptional circumstances. I do not find anything so exceptional here so as to justify exercise of one's said power and jurisdiction. All that has happened here is that one of the parties to the administration suit has, qua one of the properties involved therein, set up in claim of tenancy under the Rent Act and has filed a declaratory suit in that behalf. One is not at this stage concerned with the question whether the plea of tenancy is genuine or false, bona fide or mala fide. Fact remains that a substantive suit has been filed to establish the same. But merely by that fact, his Court would hardly be justified in transferring the said suit to this Court. The Court appropriately seized thereof should be permitted to hear and try the same on its own merits and in accordance with law. Prayer for transfer is, declined.

9. Mr. Cooper is, however, justified in submitting that justice requires an early end to all this litigation in which the parties have stood involved for the better part of their lives. Mr. Sanghavi joins in this submission. Now, in the unfortunate facts and circumstances of this case, this, indeed, is a fit matter for issuing

appropriate directions accordingly. The Will of Bai Navajbai is of the year 1912. She died in the year 1918. All the executors under the said Will have also expired. Petitioner No. 1 who is himself one of the residuary legatees under the said Will and who has obtained letters of administration of the properties and credits of the deceased Bai Navajbai has also grown very old. Virtually same is the position of the other parties involved in this litigation. And the administration of the estate merely continues to remain incomplete. The administration suit itself is of the year 1968. More than fifteen years have since elapsed. But for the suit under the Rent Act, the administration suit would have been decided by now. The suit under the Rent Act should not become an additional cause for further delay in completing the administration of the estate in question. This is, indeed, one of those cases where nothing seems to have survived with certainty save and except litigation. Interests of justice, therefore, necessitate directions for peremptory hearing of the suit under the Rent Act as also peremptory hearing and disposal of appeal, if any, therefrom. One fervently hopes that these directions embodied in the order below stand fully complied with by all concerned.

10. In the result, while rejecting the petitioners' prayer for transfer to this Court of the suit under the Rent Act, the following order passed :---

(a) The sole defendant (petitioner No. 1 herein) in R.A.D. Suit No. 796 of 1983 pending in the Court of Small Causes at Bombay, will file his written statement to the said suit as expeditiously as possible but latest by 30th June, 1983. Discovery and inspection to be thereafter completed latest by 15th July, 1983. Said suit should be placed before the trial Court for further directions peremptorily on Monday, 18th July, 1983. The said suit should thereafter be tried and disposed of giving top priority thereto and as expeditiously as possible but in any event and latest by 31st August, 1983. The learned Chief Judge of the Court of Small Causes at Bombay should assign the said suit to an appropriate Court with a view to see that these directions are fully complied with well in time.

(b) The trial Court deciding the said suit should supply to the parties or their respective Advocates ordinary copy of its judgment within one week thereof. Any party desiring to prefer appeal therefrom should do so within two week of receipt of the ordinary copy of the trial Court's judgment. The party filing appeal will give notice thereof to the respondents. The appeal Court will set down the appeal for hearing giving top priority thereto and decide the same as expeditiously as possible but latest and in any event within six weeks of the filing thereof.

(c) Both the trial Court as also (if any appeal is filed) the Appeal Court should see to it that the above directions are fully complied with.

(d) Liberty to the parties to apply to this Court if any occasion arises.

11. Order accordingly on this petition. In the circumstances of the case there will be no order as to costs of this petition.

12. Writ of this order should be sent to the learned Chief Judge of the Court of

Small Causes, Bombay, immediately.