

(2025) 04 BOM CK 0278

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition No. 1872 Of 2023

Laxman Singh S/o Dhansingh

APPELLANT

Vs

Sushma S/O Pramod Mahajan And Others

RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 10, Order 7 Rule 10A

Maharashtra Rent Control Act, 1999 — Section 7(5), 24

Provincial Small Cause Courts Act, 1887 — Section 22, 23, 24, 26, 39, 40, 41, 43, 45, 46, 47

Citation : (2025) 04 BOM CK 0278

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : R.D. Hajare, A.P. Deshmukh

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. Issue Rule returnable forthwith. Learned Counsel Mr. A.P. Deshmukh waives service of Rule on behalf of the respondents. With consent of learned Counsel for the parties, the petition is taken up for final hearing.

2. The petitioner-original defendant has assailed the judgment dated 16/01/2023 passed by the Ad hoc District Judge-2, Nagpur in R.C.A. No.542/2014. The first appellate Court was pleased to dismiss the appeal.

3. The respondents-original plaintiffs had filed a suit being R.C.S. No.50/2014 for ejection, possession and also for mandatory injunction. While dismissing the appeal, the first appellate Court, in categorical terms, held that the relationship between the parties is/was of licensor and licensee.

4. This finding led petitioner to raise the issue of jurisdiction of the civil Court to entertain the suit. Section 24 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "Act of 1999" for short) provides that when a licensee

is in possession or occupation of premises given to him, on licence for residence, he shall deliver the same to the landlord on expiry of the period of licence and on failure to do so, the licensor shall be entitled to recover possession of such premises from the licensee by making an application to the Competent Authority.

5. In this regard, the provisions of Chapter VIII of the Act of 1999 are relevant. It provides for summary disposal of certain applications, which include application filed under Section 24 of the Act of 1999. Section 24 also provides that the licensee, who does not deliver possession of the premises to the landlord on expiry of period of licence, shall be liable to pay damages at double the rate of licence fee. Section 39 provides that the provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Thus, the provisions of Chapter VIII have overriding effect. Section 40 provides for appointment of Competent Authority, which is said to have been appointed. Section 41 provides for definition of landlord for the purpose of Chapter VIII and sub-clause (c) thereof provides that the landlord, who has given premises on licence for residence or a successor-in-interest referred to in Section 24. Explanation (a) to Section 24 of the Act of 1999 provides that landlord includes successors-in-interest, who becomes landlords of the premises as a result of death of such landlord. The respondents are successors of original landlord and thus are landlords in terms of above explanation. Section 42 provides that landlord may submit application under Sections 22 or 23 or 24 to the Competent Authority as if it were a plaint. Section 43 provides for special procedure for disposal of application, which is of a summary nature. Section 44 provides that order passed by the Competent Authority shall be non-appealable, however, revision would lie before the State Government or such Officer as authorized in this behalf. Section 45 provides for effect of refusal or failure to comply with order of eviction. Section 46 provides that pending suits and proceedings in the Court as on the date of commencement of the Act shall be heard and disposed of by the Court, in which the proceedings are pending. Section 47 is important, which provides for bar of jurisdiction. It provides with a saving clause that no Civil Court shall have jurisdiction in respect of any matter, which the Competent Authority or the State Government or an Officer authorized by it, is empowered by or under this Act to decide.

6. Saving clause deals with the matter that may be filed before the civil Court in terms of the provisions of the Act of 1999. So, to avail protection under saving clause, there has to be an express provision in the Act of 1999 that would enable the licensor to file suit in civil Court. On this point i.e. application to be filed by licensor in terms of Section 24 of the Act of 1999, there is no other express provision in the Act that would enable the licensor to file the suit before the civil Court.

7. Thus, in a case, where a licensee is in possession or occupation of premises given to him on licence for residence, he is duty bound to deliver the same to the

landlord on expiry of period of licence and on failure to do so, the licensor is entitled to recover possession of such premises from the licensee by making an application under Section 24 of the Act of 1999 to the Competent Authority.

8. It appears from the impugned judgment that the petitioner was inducted by respondents' father in the suit premises as licensee vide agreement dated 01/01/2009 on a monthly licence fee of Rs.1,900/- for a period of 11 months. The findings rendered by the Courts below indicate that the agreement of licence had expired in November, 2009 and the same is not renewed. This position has been not disputed by the parties. If that be so, the appropriate remedy for the respondents was to approach the Competent Authority in terms of Section 24 of the Act of 1999. The civil Court had no jurisdiction to entertain the suit being hit by Section 47 of the Act.

9. The Counsel for the respondents has invited my attention to the judgment passed by the Co-ordinate Bench of this Court in the case of Umesh Shamrao Raut and another vs. Kundlik s/o Ramdas Raut (deceased) through Legal Heirs, in Second Appeal No.271/2013, wherein the Court in paragraph 4 held as under:

"4. It cannot be disputed that though the judgment of Full Bench in the case of Prabhudas Kotecha is considering Section 41 of Presidency Small Causes Court Act, the provisions of Section 26 of the Provincial Small Cause Courts Act are *pari materia*. That being the case, the judgment in Prabhudas Kotecha would apply with equally rigor to proceedings for eviction between licensor and licensee, including a gratuitous licensee, under Section 26 of the Provincial Small Cause Courts Act. In that light of the matter, the suit as filed before the trial Court, was clearly not maintainable in law."

10. The Counsel for the respondents submits that in terms of Section 26 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as "Act of 1887" for short), the suit filed by the respondents before the Small Causes Court was maintainable.

11. This argument is unacceptable on more than one reasons. Firstly, the suit referred to in the said judgment was filed in the year 2000 being R.C.S. No.738/2000 and the Act of 1999 came into force on 31st March, 2000. Therefore, the possibility of effect of Section 46 of the Act of 1999 cannot be ruled out, which provides that pending suits and proceedings shall continue before the Court, where the suits/ proceedings were filed. Secondly, the provisions of the Act of 1999 were not at all referred to in the said judgment. It is worth mentioning here that the Act of 1887 does not define licensee, whereas sub-section 5 of Section 7 of the Act of 1999 define 'licensee' to mean, a person, who is in occupation of the premises under a subsisting agreement for licence given for a licence fee or charge. Thus, it is clear that under the Act of 1999, a person, who is required to pay licence fee or charge for occupation of the premises is termed as 'licensee' and in that sense, gratuitous licensee will not be covered in the said definition. As against this, Section 41 of the Act of 1887 deals

with recovery of possession of an immovable property from the licensee, whether or not the licensee is paying licence fee and thus includes a gratuitous licensee. Thus, the licensee for the purpose of the Act of 1999 and the Act of 1887 are two different categories.

12. That apart and as discussed above, Section 24 read with the provisions of Chapter VIII of the Act of 1999 would make it abundantly clear that since a complete procedure is stipulated for recovery of possession by licensor of an immovable property upon expiry of licence, the appropriate remedy for licensor will be to apply before the Competent Authority in terms of Section 24 of the Act of 1999. Needless to say that in the State of Maharashtra, the provisions of the Act of 1999, having received assent of the President, will prevail over the Act of 1887.

13. The sum and substance of above discussions is that the Small Causes Court at Nagpur had no jurisdiction to try the suit between the parties. The judgment and decree passed by the trial Court is, thus, without jurisdiction. The appellate Court failed to consider the same, may be because the issue of jurisdiction was not argued before it. Nonetheless, the judgment and decree without jurisdiction being nullity, can be questioned in any proceedings. Resultantly, the following order is passed:

ORDER

I. The petition is partly allowed.

II. The judgment passed by the Ad hoc District Judge, Nagpur in R.C.A. No.542/2014 is quashed and set aside.

III. The plaint shall be returned to the respondents in terms of Order VII Rule 10 of the Code of Civil Procedure. The trial Court shall proceed to pass consequential order including order under Order VII Rule 10-A of the Code of Civil Procedure, if application is so made by the respondents.

IV. The petitioner shall, within four weeks of his first appearance before the Competent Authority, deposit arrears of licence fees and shall continue to deposit the same pending proceedings before the Competent Authority.

V. Rule is disposed of in above terms with no order as to costs.