
(2009) 07 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 4143 of 2008

Masjid Alfuddin Ahle Hadis Trust

APPELLANT

Vs

Jamil Ahamad Driver and Seikha Jabiullah

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 43 Rule 1, 104
Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28
Maharashtra Rent Control Act, 1999 — Section 33, 34
Provincial Small Cause Courts Act, 1887 — Section 17, 26, 26C

Citation : (2009) 07 BOM CK 0048

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : P.K. Mishra, for the Appellant; Gulal Mohammad, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. This writ petition is directed against the order passed by the District Judge-9, whereby he dismissed a miscellaneous appeal as not tenable.

3. The facts relevant for the purpose of this writ petition are as follows The petitioner/plaintiff instituted a civil suit in the court of small causes for possession of the suit property against respondent No. 1/defendant alleging that respondent No. 1, who is a tenant has not paid the rent regularly. The suit is filed under the Maharashtra Rent Act. Respondent No. 2 filed in that suit an application purporting to be an application under Order 1 Rule 8-A of C.P.C. for adding him as plaintiff. The learned Small Cause Judge allowed the application and plaintiff felt aggrieved thereby. The plaintiff, therefore, preferred miscellaneous appeal before the District Judge against the said order. The learned District Judge upon hearing the parties found that an appeal is not maintainable and the plaintiff feels aggrieved by that finding and prefers this writ

petition.

4. I have heard the learned Counsel for the petitioner as well as respondent.

5. Shri Mishra, learned Counsel for the petitioner submits before me that an appeal must lie before the District Judge. He submits that although Order 50 of C.P.C. would disclose that provisions of Order 41 to 45 do not apply to small cause suit still an appeal could be preferred by virtue of provisions of Section 26A of the Small Causes Court Act. He submits that if Section 17 and 26 to 26-C are read together that would make it clear that an appeal would lie against such an interim order. He also submits that the provisions of Section 17, 26 to 26C of Provincial Small Causes Court Act and provisions of Section 33 and 34 of Maharashtra Rent Act are not inconsistent. He submits that if they are read harmoniously it would be clear that an appeal against the interim order could lie to the District Judge. The undisputed facts are as follows

i) There is a court established at Nagpur under the Provincial Small Cause Courts Act,

ii) the suit is pending before it,

iii) the suit is under the provisions of the Maharashtra Rent Act, 2000 and,

iv) the appeal is preferred against an interlocutory order.

6. To my mind, the provisions of Section 33 of the Maharashtra Rent Act and Section 26 of the Small Causes Court Act need to be read together. Section 33 of the Maharashtra Rent Act reads thus 33: Jurisdiction of courts.

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, 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 Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) In any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897, such court, and

(c) 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 and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); 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.

7. A bare reading of the Section would make it clear that the power to exercise

the jurisdiction under the Maharashtra Rent Act is vested in Small Causes Court. It in fact becomes a Tribunal under the Maharashtra Rent Act. While dealing with the suit instituted under the Maharashtra Rent Act, it does not function as a Small Causes Court but functions as a court constituted under that Act i.e. Maharashtra Rent Act. The provisions of Section 26 of the Provincial Small Cause Courts Act make it more clear and leave no manner of doubt. Section 26 of the Provincial Small Cause Courts Act reads as follows

26. Suits or proceedings between licensor and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of Sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefore ,irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in Sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of license fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976 or any law for the time being in force, apply

Sub-Section 2 of the said Section clearly says that when a suit is instituted under the provisions of the Rent Act, Section 26 itself would have no application. This suit having been instituted under the Maharashtra Rent Act, Section 26 will have no application at all. The result would be the provisions of Section 26A of the Small Cause Courts Act would have no application. When a suit is instituted under the Rent Act, the Small Cause Court takes cognizance of the same u/s 33 of the Rent Act and not u/s 26 of the Provincial Small Cause Courts Act. The suit is basically directed to be instituted in Small Cause Court with a view that the suits are disposed off early and in a summary way. That is also evident from the provisions of Order 50 of the C.P.C. Order 50 of the C.P.C. excludes application of many of the provisions of C.P.C. to the suits instituted under the Provincial Small Cause Courts Act. When a special enactment makes a provisions of appeal and prohibits certain appeals, the special enactment must prevail over the general law. Section 34 of the Maharashtra Rent Act speaks of right to appeal and revision. It reads as follows:

Section 34 says that an appeal shall lie to the District Judge where a suit is decided by a court of civil judge or Small causes judge out of Mumbai. The

proviso further makes it clear as to in which case the appeal shall lie. The proviso says that no appeal shall lie from a decree or order where such appeal is not provided under the Civil Procedure Code.

In other words, an appeal would lie as per the provisions of C.P.C. alone. The order under challenge before the District Court was on the application under Order 1, Rule 8 of C.P.C. An order on such an application is an interlocutory order and is certainly not a decree. If we take a look at the provisions of Section 104 of C.P.C. as well as Order 43 Rule 1, we will find that no appeal is provided against an order on an application under Order 1 Rule 8.

8. Mr. Mishra, learned Counsel for the petitioner, had placed before me a decision reported in Sheikh Ahmad Sheikh Chand Mohamad Vs. Kazi Nasiruddin, to support the contention that an appeal is maintainable u/s 26A of the Provincial Small Causes Court Act. The said decision has no bearing on the controversy before me for the simple reason that the suit in that case was not one under the Maharashtra Rent Act. In the circumstances, I find that the learned judge of the District court did not commit any error in holding that an appeal against the order on an application under Order 1 Rule 8 is not maintainable. In view of this, I find no substance in the writ petition. The same is dismissed. No order as to costs.