
(1999) 02 BOM CK 0051

In the Bombay High Court

Case No : Revision Application No. 523 of 1997

Minguel Francis D"Costa

APPELLANT

Vs

Sultan Sulamali Karim Chhatriwala and others

RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1999) 3 BomCR 164

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : A.V. Anturkar, Kishore Jain and Mrs. Swati Deshpande, instructed by Ashok Jain, for the Appellant; Nasrat Shah and Ms. Pervin Contractor, instructed by Naazish Shah, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—On 12-10-1996 the petitioner filed a suit as Short Causes Suit No. 5671 of 1996 in the City Civil Court, Bombay against respondent No. 1 for injunction restraining him from disturbing the petitioner's possession on premises bearing No. 7/C, Ground Floor, Sunbeam Chambers, New Marine Lines, Mumbai 400 020. The petitioner claims his tenancy over this premises. While bearing interim application, the learned Judge found that the dispute is really between the landlord and tenant and the City Civil Court has no jurisdiction. Therefore, on 15th October, 1996 the said suit was withdrawn with notice to respondent No. 1. On the same day, the petitioner filed a suit for declaration as Suit No. 1794 of 1996 in the Court of Small Causes at Bombay against the respondent No. 1 for declaring that he was tenant of the respondent No. 1 in respect of the aforesaid premises and also for the injunction restraining defendant No. 1 from dispossessing the petitioner from the suit premises without due process of law.

2. In the meantime, respondent No. 1 also filed a suit bearing No. 5852 of 1996 for mandatory injunction to direct the petitioner to remove himself from the suit premises and for other reliefs. The respondent took out Notice of Motion for

interim reliefs in the said. The petitioner had filed Affidavit in reply to the said Notice of Motion. The petitioner raised in the reply an objection u/s 9(A) of the CPC as to the jurisdiction of the City Civil Court to entertain the said suit and prayed to the Court that the said objection to the jurisdiction be decided as preliminary issue. Thereafter the respondents through Chamber Summons No. 5403 of 1996 amended the plaint with the result that the petitioner was required to file an additional Affidavit in Reply dated 14-3-1997 to the amended plaint. As consequence of the amendment, the nature of the suit was changed as one for recovery of possession. The Ld. Judge after hearing the respective Advocates answered the said preliminary issue against the petitioner by his judgement dated 21st March, 1997, as marked Exh. H and by a separate order the property was put in possession of the Receiver. It is this order dated 21st March, 1997 which is coming under challenge in this writ petition.

3. The learned Counsel for the petitioner Mr. Anturkar during his argument raised two points, one is that whether the Court below was right in dismissing the preliminary objection raised by the petitioner u/s 9(A) of the CPC and by separate order the premises was put in possession of the Receiver and whether Notice of Motion taken by respondent for interim injunction could be heard before issue regarding jurisdiction is decided. Secondly, since the suit was amended as one for possession, the valuation of the subject matter of the suit exceeds pecuniary jurisdiction of City Civil Court and City Civil Court has no jurisdiction.

4. He also raised objection pertaining to jurisdiction u/s 28 of the Bombay Rent Act. I have gone through the impugned order passed in Notice of Motion No. 5403 of 1996 on 21st March, 1997. In the impugned order, the Lower Court has framed following issues:

1. Does the defendant prove that this Hon"ble Court has no jurisdiction to entertain and try the suit since the relationship is of landlord and tenant and therefore covered u/s 28 of the Rent Act, as stated in para 11 of the A.R.

2. Does the defendant prove that this Hon"ble Court has no pecuniary jurisdiction to entertain and try the present suit as stated in para 15 of the Affidavit in reply.

5. In para 8 of the City Civil Court's order, following finding has been entered:

"It is the case of the plaintiff that the defendant was the servant and was not in use, occupation either as a tenant or as a licensee. As far as prayer (a) is concerned, the same has been inserted in the plaint as and by way of abundant caution. Hence, therefore, today as can be seen for as the said issue of jurisdiction is concerned wherein according to the defendant section 28 of the Rent Act is attracted. The averments in the plaint points out a case of relationship of master and servant and not landlord and tenant. Hence, therefore, as far as the said issue is concerned, the same is answered in the affirmative holding that this Hon"ble Court has jurisdiction to entertain and try the present suit."

This observation of the lower Court is quite illegal and unwarranted. The learned Counsel for the respondent Mr. Nasrat Shah submits that the jurisdiction of the Court has to be decided on the basis of the pleadings in the plaint and not on the basis of the written statement. On principle what the learned Counsel for the respondent has stated is correct so long as the jurisdiction is not questioned by the opponent. But here in this case, the defendant has raised objection to the jurisdiction on the basis of the section 28 of the Bombay Rent Act. According to him he is a tenant. Therefore, the issue has been arising whether the petitioner is tenant in respect of the suit premises or not. Therefore, section 28 will attract. If section 28 is attracted, then the mandate of the section has to be followed. The Court cannot brush aside the operation of section 28 by saying that the plaintiff has made averments in the plaint their relationship exists between the parties was of master and servant by way of abundant caution.

6. The second point is with regard to pecuniary jurisdiction. Regarding this point, the lower Court has observed thus:

"It appears that after passing of the order of the Hon"ble High Court the events having taken place, the plaint came to be amended and additional prayers came to be inserted. Today, admittedly, as far as the possession is concerned, the same is with the Court Receiver. Hence, therefore, even as far as the second aspect of pecuniary jurisdiction is concerned, the same is answered in the affirmative holding that this Hon"ble Court has jurisdiction to entertain and try the present suit."

7. Quite strange attitude has been adopted by the trial Court. The trial Court has no alternative except to value the suit on the basis of relief sought in the suit. The Court cannot be carried away by the circumstances under which amendment of the relief was sought. Where once the relief is amended, valuation of the subject matter of the suit must be done and return the plaint, if it is found it has no pecuniary jurisdiction or if it is found still within the pecuniary jurisdiction, ask the plaintiff to pay the Court fee it is found deficit and proceed with suit.

8. The learned Counsel for respondent argued that the question of valuation of the suit property will arise only when the issue regarding the same is raised. In order to raise such issue written statement has to be filed. Even after lapse of two years the petitioner did not choose to file written statement. Therefore, examination of pecuniary jurisdiction can be examined at appropriate time. Therefore, he tried to defend the order impugned in this case. Several decisions have been cited before me by either parties. I do not think that it is necessary to discuss all these decisions for the reasons stated below :

As I pointed out earlier, the lower Court cannot postpone the consideration of the question regarding jurisdiction both pecuniary or otherwise when it was raised. Section 9-A of Code of Civil Procedure, formulates that before passing any interim relief or vacating any order of interim relief, these two questions have to be gone into by the Court below u/s 9(A). Therefore, in my view, the order

impugned requires interference. In this context, it is necessary to refer to section 9-A of CPC which was introduced in State of Maharashtra. Section 9-A of Code of Civil Procedure, reads as under :

"Where at the hearing of application relating to interim relief in suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a Receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1) at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

9. The learned Counsel for the respondent had argued that the question of pecuniary jurisdiction and the preliminary objection can be considered by the Court only when the issue was framed. In this case, written statement was not filed even after two years. Objection to jurisdiction can be examined by the Court as and when written statement filed by the petitioner and issues framed. This contention of the respondent has to be rejected. The language of section 9-A make it amply clear that objection regarding jurisdiction can be raised in the interlocutory stage. It need not have waited till filing of written statement. Court can even suo moto examine the jurisdictional aspect of the case if it struck to Court. Therefore, compulsion of section 9-A is that before interim order is passed or is vacated, jurisdictional aspect has to be examined by the Court as a preliminary steps. Legislature policy is clear and unambiguous that a Court which lack jurisdiction need not unnecessarily go into the legal entanglement between the parties and waste time on it.

11. At this juncture, I have to point out a disturbing situation that has arisen in this suit. The suit was filed in 1996. Till today, as submitted by the Counsel for the respondent the petitioner didn't chose to file written statement, though several orders came to be passed by the trial Court. Because of this non-filing of the written statement, the issues arising in the suits could not be formulated by the Court below. If that has been done on a priority basis then the Court would have disposed of the above two issues before entertaining any application for interim order. Nowadays, we find in the actual practice, the litigants are fighting for their immediate benefits. They are not very much alert for their responsibilities. When a suit is filed before the trial Court on receipt of the notice,

in a sense of urgency the defendant should appear and file his defence if he decides to contest the suit. That is the statutory duty of a defendant. But even today, practice followed is what we were following in colonial days. The said tendency is allowed to continue in the Civil Courts in India, and no urgency ever is shown in filing written statement. The trial courts are exercising their discretion in extending the time for filing written statements endlessly by mere asking. One of the grounds for delay of litigations, particularly civil litigations in Civil Courts is the non fulfilment of the statutory duty cast upon the parties. This case is the finest example of such situation. Had the written statement is filed in a sense of urgency, definitely the trial Court would have framed issues on these two points that touch up on the jurisdiction of the trial Court. Without doing that, the parties are fighting for the interim relief. It has already completed its first round of litigation only on interim reliefs upto the High Court and this is the second round. At the same time, the actual defence which would have been raised by the defendant by filing written statement is lacking. Of course, according to Mr. Anturkar, the issue need not be raised or not necessarily be raised by written statement alone. It can be raised at any point of time either in the interim application or otherwise. Without disputing that position, I hasten to add that, that will not take away responsibility of the defendant of filing written statement with a sense of urgency. The issues are normally raised only after filing of written statement. By other interim application the important issues are not necessarily raised.

12. In the given situation, the objection relating to the jurisdiction might have been raised in the reply for interim application also. But that is different question. Here, the defendant has committed a serious lapse before raising jurisdictional question in not filing the written statement. The old age practice and impression of the litigants is that they can take adjournments for filing the written statement endlessly and courts also does not intend to put any limitation on exercising their discretion in this regard. There are cases where the written statements are not filed for 3/4 years. At interim stages, the matter comes for several times upto High Court and Supreme Court. The lower Courts have to discourage this tenancy. Endlessly giving time for filing written statement has to be curtailed strictly. Courts have to fix a time frame within which time all pleadings in a case are completed. If written statement is not filed within the time frame fixed, the Court should not entertain the written statement thereafter.

13. In view of this situation, I pass the following order :

(i) There shall be an order of stay the operation of the order dated 21st March, 1997 passed in Suit No. 5852 of 1996 and Notice of Motion No. 5403 of 1996 impugned in this case for three months from today. The matter is remanded back to the trial Court for deciding the jurisdictional issues as preliminary issues.

(ii) The petitioner is directed to file written statement, if he so desires within four weeks from today, beyond which no time should be granted by the trial Court. After filing the written statement, in the event of the framing of issue pertaining

to the jurisdiction including that of the pecuniary jurisdiction be decided within six weeks thereafter. Issues regarding jurisdiction should be heard and decided afresh untrammelled by the observation made in the impugned order.

(iii) In case the trial Court finds that it has no jurisdiction to try the suit, appropriate orders shall be passed according to law and in that event the order passed in Notice of Motion No. 5403 of 1996 on 21-3-1997 shall stand set aside.

(iv) In case the Court finds that it has jurisdiction to try the suit, the stay ordered in respect of Notice of Motion No. 5403 of 1996 stands vacated and the order becomes operative.

With the above directions, Civil Revision Application is allowed and matter is remanded back as directed above. Parties to appear before the Court below on 3-3-1999.

The order must be communicated to Court below immediately.

C.C. expedited.

The Registrar is directed to send the copy of the judgement to the lower Court immediately.

14. Application allowed.