

(1969) 08 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 391 of 1968

Mirabelle Hotel Co. Pvt. Ltd.

APPELLANT

Vs

Manu Subedar and Others

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 28, 28(1)
Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 — Section 15(1), 17(2)

Citation : AIR 1971 Bom 38 : (1970) 72 BOMLR 222 : (1970) ILR (Bom) 768

Hon'ble Judges : Tarkunde, J;Nathwani, J

Bench : Division Bench

Advocate : S.T. Tijoriwala, instructed by Khambatta and Nain Kapadia Attorneys, for the Appellant; H.J. Thacker and G.D. Dave, for the Respondent

Judgement

Tarkunde, J.—This Civil Application came up for hearing before Mr. Justice Kantawala and was referred by the learned Judge to a Division Bench as it involves a somewhat complicated question of law.

2. Respondents 1 to 5 are trustees of a public charitable trust which owns two buildings at Marine Drive in Bombay. The trustees are referred to hereafter as the plaintiffs. The petitioners in this revision application are a private limited Company which runs a hotel. They are the first defendants in the suit from which this revision application has arisen and are referred to hereafter as the defendants. By an indenture of lease dated 8th June 1948, the plaintiffs let out to the defendants certain portions from the said two buildings for a period of ten years commencing from 1st June 1948. The period of the lease expired on 1st June 1958. On 26th April 1963, the plaintiffs served a notice on the defendants terminating their tenancy from the end of May 1933. The plaintiffs then filed a suit in the Court of Small Causes at Bombay for possession of the premises on the ground that the defendants had committed breaches of the terms and conditions of the lease. Thereafter on 4th June 1964 the plaintiffs filed a suit in the Bombay City Civil Court which has led to the present revision application. The

plaintiffs prayed in the suit that the defendants should be permanently restrained from fixing any partitions, frames, wood works, fittings or fixtures, from carrying on any kind of carpentry work or masonry work, from carrying on any kind of alterations or additions and from storing any timber, boards, etc. in or about the premises in dispute. The plaintiffs also prayed for a permanent injunction restraining the defendants from giving any portion of the premises to any person except on the basis of furnished accommodation inclusive of board and service. In support of these prayers the plaintiffs relied on the terms and conditions of the said lease dated 8th June 1948. The plaintiffs averred in paragraph 4 of the plaint.

"The plaintiffs say that the said Lease dated 8th June, 1948 was for a period of 10 years commencing from the 1st day of June 1948 and the said Lease has expired by efflux of time and even otherwise the said Lease has been determined by a proper notice to quit as per the terms and conditions of the said lease. The 1st defendants are therefore the statutory tenants of the plaintiffs and are in possession of the said premises let out to them as such statutory tenants. Plaintiffs say that the 1st defendants are bound even as such statutory tenants by the terms and conditions of the said Lease dated 8th June 1948." In the plaint the plaintiffs referred to various terms and conditions of the said lease, alleged that the defendants had committed breaches of those terms and conditions, and prayed for permanent injunctions against the defendants as aforesaid.

3. After filing the suit the plaintiffs took out a Notice of Motion for interim injunctions, in the same terms as in the plaint. The interim injunctions were granted by the trial Court. The defendants approached this Court in appeal from the order granting the interim injunctions. At the hearing of the appeal Mr. Justice Nain directed that the trial Court should hear the parties and decide as a preliminary issue whether the Court had jurisdiction to entertain and try the plaintiffs' suit. The preliminary issue was heard by Judge Lentin of the City Civil Court. The learned Judge held that the Court had jurisdiction to entertain and try the suit. This decision is challenged by the defendants in this revision application.

4. The question involved is to be decided with reference to the relevant terms of Section 28(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, referred to hereafter as "the Bombay Rent Act." Under Sub-section (1) of Section 28, the Bombay Court of Small Causes has exclusive jurisdiction in Greater Bombay

"to entertain and try any suit or proceeding between landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part (Part II of the Bombay Rent Act) apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions."

Thus, u/s 28(1) the Courts specified in that section have exclusive jurisdiction in three classes of matters: (i) any suit or proceeding between a landlord and a

tenant relating to the recovery of rent or possession of any premises to which the provisions of Part II of the Bombay Rent Act apply, (ii) decide any application made under the Bombay Rent Act and (iii) deal with any claim or question arising out of the Bombay Rent Act or any of its provisions. The present suit does not fall in the first two of these three classes. The question is whether the subject-matter of the suit falls in the third class--that is whether any claim or question arising out of the Bombay Rent Act or any of its provisions is involved in this suit,

5. As noticed above the suit has been filed by the plaintiffs for enforcing the terms and conditions of the lease dated 8th June 1948. In paragraph 4 of the plaint, which we have quoted above, the plaintiffs specifically alleged that, although the defendants have ceased to be contractual tenants, they are in possession of the premises as statutory tenants and that, even in that capacity they are bound by the terms and conditions of the said lease. In claiming that the defendants are bound by the terms and conditions of the lease even in their capacity as statutory tenants, the plaintiffs obviously rely on Section 12(1) of the Bombay Rent Act. That provision lays down that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, and "observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

In substance and in effect, Section 12(1) provides that after the termination of a contractual tenancy by efflux of time or by a notice to quit, the relation of landlord and tenant will continue between the parties and that the tenant will be bound by the conditions of the contractual tenancy in so far as they are consistent with provisions of the Act. Since the statutory tenant is thus bound by operation of law to observe and perform the conditions of the contractual tenancy, he can be restrained by a permanent injunction from committing a breach of any of those conditions. Thus the claim of the plaintiffs in the present suit for permanent injunction against the defendants arises out of Section 12(1) of the Bombay Rent Act and the Bombay Court of Small Causes has been invested by Section 28(1) of the Act with the exclusive jurisdiction of dealing with that claim.

6. Considerable support to this view is available from the decision in *Wolfe v. Clarkson* (1950) 2 All ER 529. There a tenant whose contractual tenancy had been terminated and who was in possession as a statutory tenant, was sued in a County Court for damages for breach of covenants to repair contained in the tenancy agreement and for arrears of rent. It was found that the amount of damages claimed by the landlord exceeded the ordinary pecuniary jurisdiction of the County Court and the question arose whether the County Court had jurisdiction to deal with the claim by virtue of Section 17(2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. Section 17(2) of that Act provides:

"A county court shall have jurisdiction to deal with any claim or other

proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, x x x x". The Court of Appeal held that the contractual obligation of the tenant was converted into a statutory obligation by virtue of Section 15(1) of the said Act and that therefore the landlord's claim arises out of the said Act and was triable by the county Court. The effect of this decision is thus summarised in Woodfall on Landlord and Tenant, 27th edition, at Article 1527, page 676:

"Where there is a statutory tenancy under the Rent Acts the landlord is entitled to sue for breach of the covenant to repair in the county court, whatever the amount of damages claimed, as it is a breach of statutory obligation to comply with the covenants of the contractual tenancy and therefore the claim arises out of the Rent Acts."

7. Section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is similar to but not identical with Section 12(1) of the Bombay Rent Act. Section 15(1) of the English Act says:

"A tenant who by virtue of the provisions of this Act retains possession of any dwelling house to which this Act applies, shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and x x x x"

It will be noticed that whereas Section 12(1) of the Bombay Rent Act provides that the tenant is bound to perform the conditions of the contractual tenancy, Section 15(1) of the English Act lays down that the tenant is not only liable to perform the conditions of the contractual tenancy but is also entitled to the benefit of any of those conditions. This difference between Section 15(1) of the English Act and Section 12(1) of the Bombay Rent Act was noticed by the Supreme Court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, . The difference, however, has no bearing on the question which falls for determination in the present case. Just as the obligation of a statutory tenant to perform the conditions of the original agreement of tenancy arises u/s 15(1) of the English Act, so the obligation of the statutory tenant to perform the conditions of the tenancy arises u/s 12(1) of the Bombay Rent Act. It follows that the landlord's claim to enforce the conditions of the contractual tenancy against Ms statutory tenancy is covered by Section 28(1) of the Bombay Rent Act and can only be dealt with by the Special Court specified in that section.

8. Mr. Thacker who appeared on behalf of the defendants controverted this conclusion on two alternative grounds. He argued in the first place that the plaintiffs' claim for permanent injunction in the present suit is not based on Section 12(1) or any other provision of the Bombay Rent Act and that, the claim, therefore, is not one "arising out of this Act or any of its provisions". Alternately. Mr. Thacker argued that supposing that the claim arises out of Section 12(1) of

the Bombay Rent Act, the claim is still not covered by Sub-section (1) of Section 28 because it has not arisen in "any suit or proceeding between the landlord and the tenant relating to the recovery of rent or possession of any premises to which the provisions of Part II of the Bombay Rent Act apply" or in "any application made under this Act."

9. In support of the first of these contentions Mr. Thacker argued that the plaintiffs' claim in the present suit is for the enforcement of certain negative covenants which run with the land and that such a claim could be made by the plaintiffs without relying on any of the provisions of the Bombay Rent Act. Mr. Thacker argued that the negative covenants which run with the land can be enforced under the ordinary law against any occupier or even against a trespasser and in support of this argument Mr. Thacker relied on *Mander v. Falcke* (1891) 2 Ch D 554 and *In re Nisbet and Potts' Contract*. If it were necessary (1906) 1 Ch D 386y to do so we would have explained why in our judgment neither of these cases has any application to the facts of present suit. It is, however, not necessary to deal with the question whether the covenants which run with land can be enforced against a statutory tenant, because the present suit of the plaintiffs is clearly not based on any allegation that the conditions which they desire to enforce against the defendants are in the nature of covenants running with land. No such averment is found in the plaint. On the contrary, as noticed earlier, the basis of the suit as explained in paragraph 4 of the plaint is that the defendants being statutory tenants, are bound "by the terms and conditions of the said lease dated 8th June 1948."

10. In order to appreciate the alternative argument of Mr. Thacker reference must be made again to the terms of Sub-section (1) of Section 28 of the Bombay Rent Act. The sub-section, so far as it is material to the present case, says that the Court of Small Causes,

"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 to which any of the provisions of this Part of the Act apply and to decide any application made under this Act and deal with any claim or question arising out of this Act or any of its provisions and x x x x no other Court shall have any jurisdiction to entertain any such suit, proceeding or application, or to deal with such claim or question."

The sub-section refers to (1) any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (ii) any application made under the Act, and (iii) any claim or question arising out of this Act or any of its provisions. Mr. Thacker argued that the exclusive jurisdiction of the Special Courts mentioned in that sub-section to deal with the matters of the third category, viz. any claim or question arising out of this Act or any of its provisions, is confined to only such claim or question as arises in cases covered by the first two categories, that is to say, in any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any

premises and in any application made under the Bombay Rent Act. If a claim or question covered by the third category arises in a case which does not fall in either of the first two categories, then, according to Mr. Thacker, the claim or question can be dealt with by the ordinary Court and not the special Court mentioned in Section 28. The present suit is between landlords and tenants, but it does not relate to the recovery of rent or possession of any premises. It is also not an application under the Rent Act. Consequently, according to Mr. Thacker although the plaintiffs' claim may be held to have arisen out of Section 12(1) of the Bombay Rent Act, it can be dealt with by the Bombay City Civil Court.

11. The above interpretation appears to us to conflict with the sense conveyed by a plain reading of that subsection. Under the sub-section the Special Courts mentioned therein have exclusive 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 covered by the Act irrespective of whether the suit or proceeding involves any claim or question arising out of this Act or any of its provisions. Thus a suit against a contractual tenant for recovery of arrears of contractual rent is required to be filed in the Special Court mentioned in that sub-section even though the suit does not involve any claim or question arising out of the Bombay Rent Act or any of its provisions. On the other hand an application made under the Bombay Rent Act must obviously deal with a claim or question arising out of that Act or any one of its provisions. That being so, the interpretation of the sub-section canvassed by Mr. Thacker would render the third category, namely, "any claim or question arising out of this Act or any of its provisions" virtually redundant. The expression "any claim or question arising out of this Act or any of its provisions" has not been limited by the Legislature to a claim or question involved in any suit, proceeding or application mentioned earlier in that subsection and we do not see any reason why such a qualification should be read into the sub-section.

12. Mr. Thacker's argument, however, has the support of some weighty authority. In *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, an ejectment application had been filed in the Bombay Court of Small Causes under Chapter VII of the Presidency Small Cause Courts Act. The opponent to the application was sought to be evicted from certain premises on the ground that he was a licensee whose license had been duly terminated. It was claimed on behalf of the alleged licensee that he was a tenant protected by the Bombay Rent Act. It was further argued on his behalf that his claim of being a tenant was a claim arising out of the Bombay Rent Act and could only be dealt with by the Bombay Court of Small Causes in the exercise of its jurisdiction u/s 28 of the Bombay Rent Act and not in the exercise of its ordinary jurisdiction under the Presidency Small Cause Courts Act. Mr. Justice J. C. Shah, (as His Lordship then was) rejected this argument and held that the ejectment application could be tried in the exercise of the ordinary jurisdiction of the Bombay Court of Small Causes under the Presidency Small Cause Courts Act. Mr. Justice Shah observed that jurisdiction has been conferred by that sub-section on the Special Courts

constituted under the Act to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises covered by part II of the Act and also to decide any application made under the said Act. Referring to the third category of matters covered by that sub-section the learned Judge said;

"..... It is true that Section 28 enables the special Court to deal with any claim or question arising out of the Act or any of its provisions. But in my judgment jurisdiction to deal with any claim or question arising out of the Act LVII of 1947 (Bombay Rent Act) or any of its provisions is ancillary to the jurisdiction conferred upon the Court to decide a suit or proceeding between a landlord and tenant or an application made under the Act. By conferring jurisdiction on special Courts constituted under Act LVII of 1947 to deal with any claim or question arising out of the Act or any of its provisions, it is not intended to indicate a third category of proceedings--that is proceedings other than suits and proceedings between landlords and tenants and proceedings in the nature of applications made under the Act, in which any claim or question arising out of the Act or any of its provisions may fall to be decided."

13. It must be observed that essentially the same question which Mr. Justice Shah decided in the above case had arisen earlier before a Division Bench of this Court in *Govindram Salamatrai and Another Vs. Dharampal Amarnath and Another*, . There a suit for possession of certain premises had been filed on the original side of this Court against an alleged licensee and the latter had raised a contention that he was a tenant protected by the Bombay Act. The Division Bench held that the original side of this Court had jurisdiction to try the suit because the defendant's contention that he was a tenant cannot be regarded as a claim or question arising out of the Bombay Rent Act or any of its provisions. In fact Mr. Justice Shah relied on this Division Bench ruling in deciding the above case, *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, . The decision of Mr. Justice Shah in that case can thus be supported without relying on the interpretation which he placed on the terms of Sub-section (1) of Section 28 of the Bombay Rent Act. Moreover, a question similar to the one dealt with by Mr. Justice Shah in *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, was later decided by the Supreme Court in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, . Although the conclusion of the Supreme Court in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, was the same as that of Mr. Justice Shah in *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, the interpretation placed by the Supreme Court on the terms of Sub-section (1) of Section 28 of the Bombay Rent Act was materially different from the one given by Mr. Justice Shah. Before dealing with the Supreme Court decision in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, however, it is necessary to refer to another decision of this Court which was relied upon by Mr. Thacker.

14. In *Shivaling Gangadhar Tambekar Vs. Navnitlal Amritlal Gandhi*, , a landlord

had filed a suit against a tenant in the ordinary Civil Court for damages and for a mandatory injunction on the allegations that the tenant had used the premises for his business when they were intended to be used as residential premises, that for the purpose of his business the tenant had installed cutting and rolling machines in the premises and that damage to the premises had been caused by the working of those machines. The trial Court held that one of the two machines had caused and would cause damage to the property of the landlord and had therefore issued a mandatory injunction against the tenant to remove the machine. A revision application from that decision came before Chagla, C. J. sitting singly and the learned Chief Justice held that the suit was rightly tried by the ordinary Civil Court. In the course of his judgment the learned Chief Justice referred to the three types of matters covered by Sub-section (1) of Section 28 of the Bombay Rent Act and said:

"..... Now, I am inclined to take the view that when the Civil Courts have been precluded from dealing with any claim or question arising out of the Act, it means that, reading the earlier part of the section, the claim or question must arise in a suit or an application referred to earlier in that part of Section 28. There must be a suit for possession or there must be an application under the Act and in that suit or in that application a claim or question must arise out of the Act. If those conditions are satisfied, then a Civil Court would have no jurisdiction. x x x"

But the case does not appear to have been decided by the learned Chief Justice on the above interpretation of Sub-section (1) of Section 28, for he went on to say in his judgment:

"..,..... Now, even assuming that I am in error when I take the view that the claim or question referred to in the third part of the relevant portion of Section 28 must be a claim or question which must arise in a suit or in an application and that that claim or question could arise independently of any suit or application, though I do not see how that can happen, even so this particular claim or question does not arise out of the Act. The claim or question in the suit is whether the tenant is liable to pay damages or to submit to an injunction by reason of certain acts committed by him. The claim or question can never arise out of the Rent Act"

Thus, the decision of the case turned on the view of the learned Chief Justice that the landlord's claim for damages and a mandatory injunction in that suit was not a claim arising out of the Bombay Rent Act or any of the provisions of that Act. This conclusion of the learned Chief Justice was further fortified by an admission which was made before him by the Advocate who appeared for the tenant that the landlord's suit for damages and mandatory injunction could not have been filed in the Special Court specified in Section 28(1) of the Bombay Rent Act. Under the circumstances, the interpretation which the learned Chief Justice placed on Sub-section (1) of Section 28 of the Act does not appear to be a part of the ratio of the decision.

15. We will now refer to the Supreme Court decision in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, . There the plaintiffs had filed a suit in the Bombay City Civil Court for a declaration that the defendants were not entitled to enter a certain shop in Greater Bombay and for a permanent injunction restraining the defendants from entering the shop. The claim was based on the allegations that the defendants were mere licensees of the shop and that their licence had been duly terminated. In their defence the defendants contended that they were the sub-tenants of the plaintiffs and that the suit was exclusively triable by the Bombay Court of Small Causes as it related to the possession of the premises covered by the Bombay Rent Act. It will be noticed that the question thus involved was the same as the one in *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, decided by Mr. Justice, J. C. Shah and in 53 Bom LR 386 : AIR 1951 Bom 300 decided earlier by a Division Bench of this Court. In the case decided by the Supreme Court Mr. Justice Das delivered a judgment in which Mr. Justice Hidayatullah (as his Lordship then was) concurred, and a separate supporting judgment was delivered by Mr. Justice A. K. Sarkar. The Supreme Court held that the suit was rightly filed in the Bombay City Civil Court and could be entertained and tried by that Court. In his judgment Mr. Justice Das referred to Sub-section (1) of Section 28 of the Bombay Rent Act and formulated the question before the Court in these terms:

"Does it mean that if the defendant raises a claim or question as to the existence of a relationship of landlord and tenant between him and the plaintiff, the jurisdiction of the City Civil Court is ousted even though the plaintiff pleads that there is no such relationship, and the only Court which has exclusive jurisdiction to try the suit is the Court of Small Causes, Bombay?"

The question was answered in favour of the plaintiffs on two grounds. It was observed in the first place that the jurisdiction of a Court to try a suit depends primarily on the averments contained in the plaint and not the defence taken in the written statement. Secondly, Mr. Justice Das approved the view expressed by the Division Bench in *Govindram Salamatrai and Another Vs. Dharampal Amarnath and Another*, that the defendant's claim of being a tenant and not a licensee cannot be regarded as a claim arising out of the Bombay Rent Act or any of its provisions. What is material to the present case is that in deciding the case, Mr. Justice Das did not interpret the expression "any claim or question arising out of this Act or any of its provisions" in Sub-section (1) of Section 28 in the manner in which that expression was interpreted by Mr. Justice J. C. Shah in *Krishnaji Ramji Vinarkar Vs. Shamsunder Jagannath Shukla*, or by Chagla C. J. in *Shivaling Gangadhar Tambekar Vs. Navnitlal Amritlal Gandhi*, . With reference to Sub-section (1) of Section 28 Mr. Justice Das observed:

"..... It proceeds on the basis that exclusive jurisdiction is conferred on certain Courts to decide all questions or claims under the Act as to parties, between whom there is or was a relationship of landlord and tenant"

A little later in the judgment His Lordship said:--

"..... When one has regard to the provisions in Part II it seems reasonably clear that the exclusive jurisdiction conferred by Section 28 is really dependent on an existing or previous relationship of landlord and tenant and on claims arising under the Act as between such parties."

His Lordship further said:--

"..... If the suit as framed is by a landlord or a tenant and the relief asked for is in the nature of claim which arises out of the Act or any of its provisions, then only and not otherwise will it be covered by Section 28"

It appears clear from these observations that in order to oust the jurisdiction of ordinary Courts in dealing with a claim or question arising out of the Bombay Rent Act or any of its provisions, it is enough if the claim or question arises between a landlord and a tenant, and it is not necessary that it should arise in a suit or proceeding or in an application of the type specified in the earlier part of Sub-section (1) of Section 28.

16.The same view is even more emphatically stated in the separate supporting judgment of Mr. Justice Sarkar in that case. After quoting the relevant part of Sub-section (1) of Section 28, His Lordship observed:

"The section deals with three different kinds of matters; namely. (1) suits or proceedings between a landlord and a tenant relating to the recovery of rent or recovery of possession of premises. (2) an application made under the Act and (3) a claim or question arising out of the Act or any of its provisions. It provides that no Court except the Court of Small Causes, so far as properties in Greater Bombay are concerned, shall have jurisdiction to entertain and try any suit or proceedings or to decide any application or lastly to deal with any claim or question of any of the said three kinds mentioned in it." After observing that the suit with which the Court was concerned did not fall within the first two categories mentioned above, his Lordship said:

"That brings me to the third class of matters mentioned in the section, namely, claims, and questions arising out of the Act. x x x x It is important to note here that this part of the section does not purport to affect any Court's jurisdiction to entertain and try a suit but it only prevents a Court from dealing with certain claims or questions. Therefore, a Court may try a suit in so far as it does not thereby have to deal with a claim or question arising out of the Act. If the other claims and questions arising in the suit cannot be tried without dealing with a claim or question arising out of the Act, then of course, the practical result would be to prevent the Court from trying the suit at all."

It is clear from this quotation that his Lordship regarded the third category as separate and independent of the first two categories. In other words, the jurisdiction of the ordinary Courts to deal with a claim or question arising out of the Bombay Rent Act or any of its provisions is ousted by Sub-section (1) of Section 28 even if the claim or question does not arise in a suit or proceeding or

in an application specified in the earlier part of Sub-section (1) of Section 28.

17. The suit before us is filed by the landlords against their tenants. The landlords' claim to restrain the tenants from committing the breaches of some of the covenants of the agreement of lease arises out of Section 12(1) of the Bombay Rent Act. It follows that the Bombay Court of Small Causes has exclusive jurisdiction to deal with this claim. That being the only claim involved in the suit, the Bombay City Civil Court has no jurisdiction to entertain and try the suit.

18. In the result the rule is made absolute and the decision of the learned trial Judge is set aside. The defendants' (petitioners') costs of this revision application shall be paid by the plaintiffs (respondents Nos. 1 to 5).

19. Revision allowed.