

**(1997) 06 BOM CK 0002**

**In the Bombay High Court**

**Case No : Writ Petition No. 1648 of 1983**

Natha Mahadu Shinde

APPELLANT

Vs

Vasant Eknath Bahirat and Others

RESPONDENT

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**Date of Decision : 18-06-1997**

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Provincial Small Cause Courts Act, 1887 — Section 15, 5

**Citation : (1998) 100 BOMLR 186**

**Hon'ble Judges : D.K. Deshmukh, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

D.K. Deshmukh, J.—By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 23.2.1983 passed by the Second Extra Assistant Judge, Pune in Civil Appeal No. 445/1982. That Appeal was filed by the petitioner challenging the judgment and decree dated 31.3.1982 passed by the Second Additional Small Causes Judge, Pune in Civil Suit No. 2360/1980. That Civil Suit was filed by the respondents, claiming therein that they are owners of the suit House, situated in Pot Hissa No. 2/11-C of survey No. 183 at Hadapsar, Pune and that the petitioner is a tenant of a room admeasuring 10" x 10" on a monthly rent of Rs. 25/-. It was further claimed that by a notice dated 28.7.1980 the tenancy of the petitioner was terminated by the landlord. The Trial Court found that the property is situated at Hadapsar, which is located beyond the limits of the Pune Municipal Corporation, therefore the provisions of the Bombay Rent Act are not applicable to the concerned suit premises. It held the notice terminating the tenancy of the petitioner valid and decreed the suit in favour of the landlord and against the tenant. In the Appeal filed by the tenant, the Appellate Court confirmed the findings recorded by the Trial Court and dismissed the Appeal. Thus the present petition is directed against the order of both the subordinate Courts below.

2. Shri Navare, the learned Counsel for the petitioner urged only one point before me. He did not dispute that the provisions of the Bombay Rent Act do not apply to the suit premises. However, in his submission the Small Causes Court before whom the suit was filed and which passed the decree, does not have jurisdiction to entertain the suit. It is pertinent to note here that the suit was filed in the year 1980. It is undisputed before me that the Small Causes Court is constituted under the Provincial Small Cause Court Act, 1887. Sectional 5 of the Provincial Small Cause Court Act lays down that a Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes. Sub-section (2) of Section 15 of the Act lays down that subject to the exceptions specified in that schedule and to the provision of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes. Sub-section (3) of Section 15 lays down that the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed two thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order. Perusal of Clause 4(a) of the Second Schedule of the Provincial Small Causes Court Act, which was in force in the year 1980, when the suit was filed and decided, shows that a suit for ejectment of a tenant from the property let out to him by a written instrument or orally is cognizable by the Court of the Small Causes. Thus there is no error in the findings recorded by both the courts below that the Small Causes Court had the jurisdiction to entertain the suit.

3. Shri Navare further contended that it appears from the plaint that according to the averments made in the plaint, the suit was filed under the provisions of Bombay Rent Act. In my opinion, it is not relevant whether the plaintiff styles the suit as the suit filed under the Bombay Rent Act or not. Even if the plaintiff styles the suit as the suit filed under the Bombay Rent Act and if the Court finds that the provisions of the Bombay Rent Act are not applicable, the tenant is not entitled to the protection of the Bombay Rent Act because its provisions do not apply to the suit premises and if the suit is in the jurisdiction of the Court of Small Causes, the Small Causes Court will nevertheless have jurisdiction to try the suit. In such a suit the only aspect to be inquired into is whether the notice terminating the tenancy is valid or not. Both the courts below have found that the notice, terminating the tenancy dated 28.7.1980 is valid. I find that the findings recorded by both the courts below are legal and correct and there is no error of law in the concurrent findings of facts recorded by the courts below.

4. In the result, therefore, the petition fails and is dismissed. Rule is discharged with no order as to costs.