

(2005) 03 BOM CK 0086
In the Bombay High Court
Case No : Suit No. 510 of 2004

Navyug Co-op. Housing Society Ltd. and Another	APPELLANT
Vs	
Vile Parle Kelavani Mandal and Another	RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 1(4), 50, 51, 56
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28, 28(1)
Civil Procedure Code, 1908 (CPC) — Section 9A
Maharashtra Rent Control Act, 1999 — Section 33, 33(1), 33(2)

Citation : (2005) 3 BomCR 579

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

Bench : Single Bench

Advocate : N.H. Seervai, J.P. Sen and Rajani Divkar, instructed by Little and Co, for the Appellant; Rohit Kapadia, S.K. Srivastav, Narayan Sahu and Chetna Vyas, instructed by S.K. Srivastav and Co. for defendant No. 1 and Vijay Tulzapurkar, Sandip Parikh and Nishant Thakkar, instructed by Mahenov Ilavia, for defendant No. 2, for the Respondent

Judgement

Deshmukh D.K., J.—In this suit, by order dated 3rd February, 2005 two preliminary issues have been framed in accordance with the provisions of Section 9-A of Civil Procedure Code, which read as under :-

"(i) Does defendant No. 1 prove that this Court does not have the jurisdiction to entertain the suit in view of the Maharashtra Rent Control Act and Presidency Small Causes Court Act ?

(ii) Does defendant No. 1 prove that the suit as framed and filed is not maintainable in this Court in view of the provisions of Sections 50 and 51 of the Bombay Public Trust Act ?"

Both the parties stated that they do not want to lead oral evidence in relation to these issues. Therefore, on the basis of pleadings and the documents produced by both the parties, I have heard learned Counsel for the plaintiffs and defendant

No. 1.

2. Now first taking up the Issue No. 1, the learned Counsel for defendant No. 1 submits that the jurisdiction of this Court to entertain the suit is barred by the provisions of Section 33 of The Maharashtra Rent Control Act. He submitted that by this suit, a decree for the specific performance of the obligations imposed on the defendant No. 1 as a lessee in the lease deed, is sought. He submitted that this suit relates to the possession of the demised premises by the defendant No. 1, therefore, the jurisdiction of this Court to entertain the suit is barred. He relies on the judgments of the learned Single Judge of this Court in the case of (i) R.J. Mehta, President Engineering Majdoor Sabha and Another Vs. Govind Ramchandra Nadkarni, , (ii) Eknath Vithal Ogale Vs. Mansukhlal Dhanraj Jain,

3. On the other hand, the learned Counsel for plaintiffs submits that unless the suit relates to the recovery of possession of the demised premises, the jurisdiction of this Court to entertain the suit will not be barred by the provisions of Section 33 of the Maharashtra Rent Control Act. The learned Counsel in support of his case relies on the judgment of the learned Single Judge of this Court in the case Vishnu Dutt Vashisth and Another Vs. Maharashtra Watch and Gramophone Company and Others, ; and the judgment of the Supreme Court in the case of Mansukhlal Dhanraj Jain and Others Vs. Eknath Vithal Ogale, .

4. Now in order to appreciate the contentions of the learned Counsel for both the sides, it is necessary to refer to the provisions of Sub-section (1) of Section 33 of the Maharashtra Rent Control Act, 1999, which reads as under:-

"Section 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 Cause Courts Act, 1887 (IX of 1887), 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."

For the present purpose, the words in that section which are relevant are "relating to the recovery of rent or possession of any premises." So far as the present suit is concerned, the prayer Clauses (a), (b), (c) and (d) are relevant, which read as under :-

"(a) for a judgment and decree directing defendant No. 1 to specifically perform their obligations under the said Indenture of Lease dated 5-11-1962, 20-7-1965 and 19-3-1981 being Exhibits "C", "E" and "I" hereto including, inter alia, by granting preferential admission to children of members of the first plaintiff society to course offered by educational institutions of defendant No. 1 and in this behalf to publish a list of the students from whom applications are received and a list of the students who are admitted in the Management Quota of the courses offered by the institutions managed by defendant No. 1;

(b) for a perpetual order and injunction restraining defendant No. 1 from putting the said plots of land more particularly described in Exhibits "B", "D" and "H" hereto and/or any structures thereon to any commercial use or to any other use not directly related to the purpose of education;

(c) for a judgment and decree directing defendant No. 1 to pay to the plaintiffs an amount of Rs. 1,00,000/- by way of damage as per particulars of claim (Exhibit "V" hereto);

(d) for a judgment and decree directing defendant No. 1 to admit the said Jigar Jhaveri, being the son of plaintiff No. 2 to the Junior College Course (Commerce) of A.J. College of Commerce or in the alternative N.M. College of Commerce."

Perusal of the above prayer clauses show that none of these prayer clause is relating to the recovery of the possession of the demised premises.

5. The above referred phrase appearing in Section 28 of the Bombay Rents, Hotel Lodging House Rates Control Act, 1947, was considered by the learned Single Judge of this Court in the judgment Vishnu Dutt Vashisth and Another Vs. Maharashtra Watch and Gramophone Company and Others, . In the said case, the suit was brought by the tenants against the landlord for permanent injunction against the landlord, restraining the landlord from permitting the formation of queues in the passage which adversely affected the business of the tenants. The Court considered the provisions u/s 28 of The Bombay Rents, Hotel Lodging House Rate Control Act, as also considered the findings in the judgment in the case of Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, and has observed thus in paragraphs 9, 10 and 12 that :-

"(9) Now the question which arises in interpreting the second part of the second condition is whether the suit must relate to the "recovery of possession" or whether it is sufficient that it relates merely to "possession". It is argued by Mr. Gandhi, who appears on behalf of the petitioners, that the words of the second condition are "recovery of rent or possession" and therefore, it is not right to read this phrase to mean recovery of rent or recovery of possession. I am unable

to accept this contention. If what was contemplated was a suit or proceeding relating to possession merely, it would have been easy for the Legislature to say that a suit between a landlord and tenant "relating to possession or to the recovery of rent" shall lie in the courts of exclusive jurisdiction mentioned in Clauses (a), (aa) and (b) of Section 28(1). The phrase "recovery of rent" has been accorded a precedence with the obvious intention that the word "recovery" must govern both "rent" and "possession". There is an additional reason why, in my opinion, it is difficult to accept Mr. Gandhi's submission. By providing that suits "relating to" the recovery of rent or possession shall be tried by courts of exclusive jurisdiction, the Legislature had already widened the scope of Section 28. The words "relating to" the recovery of rent or possession have a wider amplitude than the words "for recovery of rent or possession" and therefore, by use of the former expression, the scope of matters falling within the exclusive jurisdiction of certain courts was extended as far as the Legislature wanted to extend it. By reading the second condition to mean that even if a suit or proceeding merely related to possession but did not relate to recovery of possession, it must go before the Court of exclusive jurisdiction, one would be extending the scope of Section 28 beyond that what is justified by the plain language of the Section.

(10) Bearing in mind the scheme of the act it seems to me difficult to hold that if a suit merely related to possession but did not related to recovery of possession, it would still be exclusively triable by the courts mentioned in Clauses (a), (aa) and (b) of Section 28(1). Normally, an action, between a landlord and tenant relates, directly or indirectly, to the possession of premises in the occupation of the tenant. One can conceive of an exceptional, class of disputes between a landlord and tenant in which the possession of premises occupied by the tenant is not a matter in issue, but those cases are few and far between. If the second condition is construed to mean that if a suit relates to the possession of premises though not to the recovery of possession of the premises, it must go before the Court of exclusive jurisdiction, Section 28 would mean, for all practical purposes, that almost every suit between a landlord and tenant shall lie in the Court of exclusive jurisdiction. Nothing would then have been easier for the Legislature than to provide that every suit between a landlord and tenant shall be triable exclusively by the Court mentioned in Clauses (a), (aa) and (b) of Section 28(1). In my opinion, therefore, the requirement of the second condition is that the suit or proceeding must relate either to the recovery of rent or to the recovery of possession of premises to which any of the provisions of Part II apply. It is not a sufficient compliance with this condition that the suit relates merely to possession of such premises.

(12) The observations made in *Ranjit Patiraj Chanbe Vs. Behram Sheriar Irani*, and in *Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore*, stand on a similar footing. In neither of these cases did the question arise whether the suit must relate to recovery of possession or whether it is sufficient that it relates to possession. Not only that such a question did not arise in these cases but the

question canvassed before me by Mr. Gandhi was neither argued nor considered in these cases and therefore, casual observations in those cases cannot be construed as a decision on the question."

The learned Single Judge, thus, held that in order to attract the bar of Section 28, the suit or the proceedings should relate to the recovery of possession of the premises.

6. The judgment of the Supreme Court in the case of Mansukhlal Dhanraj Jain and Others Vs. Eknath Vithal Ogale, , shows that the Supreme Court has also taken the same view. In my opinion, the observations of the Supreme Court from paragraph 16 and some observations from paragraph 18 are relevant which read as under :-

"16. It is therefore, obvious that the phrase "relating to recovery of possession" as found in Section 41(1) of the Small Cause Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase.

18. When Section 41(1) of the Small Cause Courts Act is read in juxtaposition with the aforesaid Section 28 of the Bombay Rent Act, it becomes clear that *pari materia* words are used about nature of suits in both these provisions for conferring exclusive jurisdiction on Small Cause Courts, namely, they alone can entertain such suits or proceedings relating to recovery of possession of premises. It is of course true that Section 41 of the Small Cause Courts Act deals with such suits between the licensee and licensor while Section 28 of the Bombay Rent Act deals with suits between landlord and tenant. But the nature of such suits as contemplated by both these sections is the same, namely, it should be the suit relating to the recovery of possession of premises. Interpreting the phrase "relating to recovery of possession" as found in Section 28 of the Bombay Rent Act, a Bench of three learned Judge of this Court in the case of Babulal Bhuramal and Another Vs. Nandram Shivram and Others, held that a suit for declaration that one of the plaintiffs was the tenant of the defendant landlord and the other plaintiffs were his sub-tenants and they were entitled to be protected from eviction squarely falls within the exclusive jurisdiction of the Small Cause Court, Bombay u/s 28 of the Bombay Rent Act and jurisdiction of the City Civil Court for entertaining such a suit is excluded."

It is thus clear that the suit merely relating to the possession is not exclusively triable by the Small Cause Court, but the suit relating to recovery of the possession is exclusively triable by the Small Cause Courts. In so far as the present suit is concerned, though it may relate to the possession of the premises by the defendant, it does not relate to recovery of possession, and therefore, in my opinion, the jurisdiction of this Court to try this suit is not ousted because of

the provisions of Section 33 of the Maharashtra Rent Control Act.

7. So far as the second preliminary issue is concerned, the learned Counsel for defendant No. 1 submits that by this suit the plaintiffs are seeking directions from this Court in relation to the administration of the trust and therefore, the suit without the permission of the Charity Commissioner, is not maintainable. On the other hand, the learned Counsel for plaintiffs submits that the plaintiffs in the suit are not seeking any direction against the Public Trust regarding its administration, the directions are sought by the plaintiffs against the Public Trust in its capacity as a Lessee to abide by the conditions of the lease and therefore, according to the learned Counsel, the suit is not barred by the provisions of Section 50 of the Bombay Public Trust Act. In my opinion, in order to appreciate the rival contentions, it is necessary to refer to the relevant provisions of Section 50 of the Bombay Public Trust Act, which reads as under : -

"50. Suit by or against or relating to public trusts or trustees or others In any case,-

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof.

The Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under Sub-clauses (i) to (iii), or one or more such persons in case the suit is under Sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs :-

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a direction to apply the trust property or its income cy-pres on the lines of Section 56 if this relief is claimed alongwith any other relief mentioned in the section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the Court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order of winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees for some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc.;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust;

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof;

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled;

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trust, whether registered or not or exempted from the provisions of this Act under Sub-section (4) of Section 1."

Perusal of the above quoted provisions of Section 50 of the Act shows that in

order to attract the provisions of Section 50 of the Act, it must show in the plaint that there are allegations regarding breach of a public trust, negligence, misapplication, misconduct on the part of the respondent. No such allegations are found in the present plaint. According to the learned Counsel for defendant No. 1, the plaintiffs in this suit are claiming direction from the Court for the administration of the public trust. Perusal of the provisions of Section 50 of the Act quoted above shows that in order to attract the application of Clause (iii) of Section 50 of the Act, the suit will have to be a suit where plaintiff alleges mal-administration of a public trust and seeks direction from the Court. The direction sought, according to the averments in the plaint, must be necessary for the proper administration of the trust. Perusal of the averments in the plaint shows that it is not the case of the plaintiffs that the defendant No. 1 trust is not being properly administered, all that the plaintiffs say is that the defendant No. 1 trust is not following the obligations under lease deed, and therefore, in my opinion, to such a suit, application of Section 50 of the Act would not be attracted. In the result therefore, both the issues are answered in the negative. It is held that neither the provisions of Section 33 of The Maharashtra Rent Control Act, nor the provisions of Section 50 of The Bombay Public Trust Act, bar the jurisdiction of this Court to entertain this suit.