

(1979) 10 GUJ CK 0010
In the Gujarat High Court

Patel Kantilal Gordhanbhai	Vs	APPELLANT
Somabhai Parshottam Prajapati		RESPONDENT

Date of Decision : 05-10-1979

Acts Referred:

Bombay Rent Act, 1947 — Section 28(1)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28(1)
Civil Procedure Code, 1908 (CPC) — Section 37

Citation : (1980) 21 GLR 430

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—These Revision Applications are filed by the original different judgment-debtors raising the question as to whether a decree

passed by the Civil Judge (J.D.) or by the Civil Judge (S.D.), exercising jurisdiction u/s 28(1) of the Bombay Rent Act could be executed by the

Small Causes Court, established in that area subsequent to the passing of the Court, or whether it should be executed by the very Court that

passed the decree, namely, the Court of the Civil Judge (J.D.) or (S.D.). Out of the above lot, Civil Revision Application Nos. 1454/78 and

1158/79 are directed by the judgment-debtors against the respective order of the Civil Judge (J.D.) and the Small Causes Court, Surat holding

that it has jurisdiction to entertain these Execution Applications. In the rest of the matters, the executing Court as well as the Appellate Court has

taken the view that the executing court, namely, the Small Causes Court, of Baroda has got jurisdiction to entertain the Execution Applications.

Both at Baroda and Surat, the Small Causes Court came to be established for the first time on 14th July, 1975. Till then, the Civil Judge (S.D.)

assisted by the Civil Judge (J.D.) was exercising jurisdiction u/s 28(1) of the Bombay Rent Act. In all these Revision Applications, decrees had come to be passed by the Civil Judge (J.D.) prior to 1975. When the Small Causes Court came to be established at Baroda and at Surat, the Execution Applications that were pending before the Civil Judge (J.D.) came to be transferred by the District Judge, administratively, to the file of the newly established Small Causes Court at Baroda and Surat. In all these matters, the judgment-debtors contended that as the decrees were passed by the Civil Judge (J.D.), the only Court that could execute the decree would be the Court of the Civil Judge (J.D.) and not the Court of the Small Causes. As said by me above, this contention of the judgment-debtors was not accepted except by one Judge of Surat and hence the matters have been brought by judgment decrees to this Court for their final decision.

2. Section 28(1) of the Bombay Rent Act deals with the jurisdiction of the Courts in respect of, "recovery of rent or possession of any premises to which any of the provisions of this part apply." The said Section 28(1) is reproduced below:

28, (1) Notwithstanding anything contained in any law 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 the City of Ahmedabad, the Court of Small Causes of Ahmedabad, "(aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) 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 to which any of the provisions of this

part 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

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.

3. The Court, below except one Civil Judge (J.D.) at Surat interpreted Section 28(1) to suggest invariably that the execution proceedings between

a landlord and a tenant which relate to the recovery of rent or possession of any premises to which Part II of the Bombay Rent Act applies are

proceedings covered by Section 28(1) of the Act and therefore the Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) had their jurisdiction

ousting by virtue of the latter part of Section 28(1). Section 28(1) deals with three sorts of legal proceedings. They are:

(1) A suit between a landlord and a tenant relating to the recovery of rent or possession of premises.

(2) A proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises.

(3) Any application made under this Act.

4. As far as suits are concerned, there is no difficulty. Similarly, as far as applications made under the Bombay Rent Act are concerned, there is no

difficulty, because the applications contemplated under the Act are the applications under Sections 11, 16, 17, and 24, which are obviously

referable. To what category of litigation, does the intervening term ""proceeding"" refer? To me, it appears that the word ""proceeding"" is referable

only to execution proceedings and other allied proceedings relating to the recovery of possession or rent. No other considerable fourth category

can be there. So, it is inevitable to hold that the term ""proceeding"", occurring in the above-quoted Sub-section (1) has got reference to execution

proceedings.

5. The interpretation which I have placed above on the word ""proceeding"" does not rest only on interpretation of that provision on first principles.

There is a judgment of the Division Bench of this Court directly dealing with the question, in the case of *Gandhi Gopaldas Gordhandas v. Boti*

Lalitubhai Marghabhai reported in 12 G.L.R. 492, a question squarely arose regarding the nature of execution proceedings, of course in the

context of the right of appeal u/s 29 of the Bombay Rent Act. However, in order to decide the question of the feasibility or otherwise of the second

appeal against the appellate decision in such execution proceedings, the bar of Section 29(2) was required to be considered, and in order to

consider the scope and ambit of that bar contained in Section 29(2), a necessary

reference was required to be had to Section 28, and particularly to the word ""proceeding"" occurring therein. The Division Bench in that case very clearly ruled as follows:

Execution proceedings arising out of the decree passed after the coming into operation of the Bombay Rent Act are included in the expression

"proceeding" used in Sub-section (1) of Section 28. Therefore, original execution proceedings for recovery of possession between a landlord and

tenant are governed by Section 28(1). If it is so, appeal against any decision therein relating to execution, discharge and satisfaction is competent

u/s 29(1) but a further appeal against an appellate decision in such proceedings is barred by Sub-section (2) of Section 29. Though second

appeals in execution proceedings lie by virtue of Section 100 read with Section 2(2) and Section 47 of the CPC (and not by virtue of Section 47),

they are barred by Section 29(2) of the Bombay Rent Act in the proceedings instituted to execute decrees passed in suits governed by Section 28

of the Bombay Rent Act.

6. It is, therefore, evident that the Division Bench of this Court has expressed its considered opinion about the connotation of the word

proceeding"" occurring in Section 28(1) and it is too late in the day now for most of these applicants judgment-debtors to contend that Section

28(1) has no reference to execution proceedings. Even the judgment of the Bombay High Court in the case of Habib Ahmed Khudabux v. Abdul

Kha" dar Rehmanji reported in 76 Bom LR 427, cited by Mr. Zaveri, who argued the case for the contesting judgment-debtors, itself accepted

this proposition that the word ""proceeding"" occurring in Section 28(1) of the Bombay Rent Act includes execution proceedings.

7. It is, therefore, evident that the execution proceedings between a landlord and a tenant relating to the recovery rent or possession of any

premises are to be entertained and tried by the Court of Small Causes, established under the Provincial Small Cause Courts Act, 1887, as referred

to in Clause (aa) and not by the Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) referred to in Clause (b), because the jurisdiction of the

Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) is ""elsewhere"", that is at places where a Court of Small Causes is not established. So, the

first conclusion to be deduced is that only the Court of Small Causes at Baroda is

competent to entertain and try the execution proceedings

between a landlord and a tenant relating to the recovery of rent or possession of the premises, governed by Part II of the Bombay Rent Act.

8. The second contention put fourth on behalf of the contending judgment-debtors was that this Section 28(1) should be interpreted to have only

prospective operations from the day the Small Causes Court comes to be established. The matter is not that simple, because the latter part in very

categorical and mandatory terms lays down that "no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to

deal with such claim or question". These are the words of mandatory character and they, once for all, exclude the jurisdiction of the Courts other

than the Court of the Small Causes where it is established. In Baroda and Surat, right from the day the Court of Small Causes came to be

established, no other Court, namely, the Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) has jurisdiction to entertain any such suit,

proceeding or application or to deal with such claim or question. The word "entertain" has been judicially interpreted in a number of cases and, "to

entertain" means to receive and adjudicate upon. The moment the Legislature says that no other Court shall entertain the execution proceedings on

and from the day the Small Causes Court comes to be established, the Court of the Civil Judge (J.D.) by express provision of the text, loses its

jurisdiction to entertain such execution applications. In other words, the moment the Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) loses

its jurisdiction by statutory operation and by the very statutory mandate the Court of the Small Causes is clothed with the authority to entertain and

try them, it is to be necessarily implied that the pending proceedings should be transferred. I say that it should be so necessarily implied because the

Legislature could not be credited with the view that all those proceedings must be continued with the Court of the Civil Judge (J.D.) or the Civil

Judge (S.D.), despite its specific declaration that those Courts cease to exercise jurisdiction over execution proceedings. Simpliciter in this two-fold

dictate or direction of the Legislature is the provision of automatic transfer of the execution proceedings from the Court of the Civil Judge (J.D.) or

the Civil Judge (S.D.) to that of the Court of the Small Causes. The administrative order passed by the District Judge, therefore, is nothing but a

necessary and inevitable corollary of the legislative intendment and dictation. For such purposes, no specific direction about transfer of the pending proceedings is necessary, though in some pieces of Legislation and in some cases the Legislature, by way of abundant caution, does make a provision for such a transfer. The absence of a specific provision of a transfer in such cases does not in any way militate against the consequences of what has been provided for by the Legislature in Section 28(1) of the Bombay Rent Act. Mr. Zaveri in this connection invited my attention to Section 28(2) of the Bombay Rent Act, and urged that under that Section the District Judge was clothed with an authority to withdraw at any stage any suit, proceeding or application from the Court of Small Causes and assign it to the Court of the Civil Judge (S.D.). His submission was that the absence of a similar provision of transfer of execution proceedings from the Court of the Civil Judge (J.D.) or the Civil Judge (S.D.) to the Court of Small Causes is indicative of the lack of power with the District Judge to transfer such proceedings. It is difficult to agree to this converse inference, sought to be drawn by Mr. Zaveri. All that Section 28(2) provides is that despite what has been said in Sub-section (1) to the effect that only the Court of Small Causes has powers, wherever it is established, the Court of the Civil Judge (S.D.) also could exercise those powers, if the concerned District Judge in his judicial wisdom thought advisable to do so. From such a positive statement, a negative inference of the type sought to be drawn by Mr. Zaveri cannot be drawn. It involves logical fallacy.

9. Mr. Zaveri then invited my attention to the Explanation appended to Sub-section (2) of Section 28 and urged that that Explanation also supported his say. It is quite otherwise. It is, on the contrary, indicative of the fact that the word "proceeding" occurring in Section 28(1) would ordinarily include all execution proceedings, including the execution proceedings arising out of the decrees passed before the coming into operation of the Bombay Rent Act. In order to exclude that inclusion of the execution applications arising out of the decrees passed after the Bombay Rent Act came into operation, this Explanation is specifically provided for. This must of necessity lead us to the inference that the word "proceeding" occurring in Section 28(1) of the Act includes the execution proceedings arising out of the decrees passed after the coming into operation of the

Act and this inference supports my initial interpretation of the former part of Section 28(1) of the Bombay Rent Act.

10. Mr. Zaveri then invited my attention to Section 50 of the Bombay Rent Act which deals with repeal. I fail to understand what relevance this

Section 50 has to the case on hand.

11. In this connection, both the sides have relied upon Sections 36 to 38 of the Civil Procedure Code, and particularly Section 37, in support of

their respective contentions. It can't be gainsaid that ordinarily every Court that passes the decree is entitled to carry its decree through by

implementing the decretal orders. In other words, the Court that passed the decree can execute its decree. This principle is very well-known and is

recognised on all hands. In the case of *Shaitkat Hussain @ AllAkram and Ors. v. Smt. Bhuneshwari Devi (dead) by L.Rs. and Ors.* reported in

AIR 1973 SC 538 , this principle is recognised to such an extent that even the subsequent withdrawal of the area, where the subject-matter of the

dispute is situated, from the jurisdiction of the Court does not affect the jurisdiction of the executing Court. In this connection, reference can also be

had to the judgment of the Supreme Court in the case of *Merla Ramanna Vs. Nallaparaju and Others*, . There, it has been very specifically

observed as follows:

It is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject-matter thereof

being transferred subsequently to the jurisdiction of another Court.

However, in the very authority of the Supreme Court, the position is clarified further as follows:

But the Court to whose jurisdiction the subject-matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such

transfer, and if it entertains an execution application with reference thereto, it would at the worst be an irregular assumption of jurisdiction and not a

total absence of it....

12. This High Court dealing with a similar situation, had made the similar observation. It is the case of *Shah Shivilal Bhogilal Vs. Shah Vadilal*

Dipchand, . It can, therefore, be safely said that but the exclusion of the Civil Courts jurisdiction by virtue of the imperative language of Section

28(1) of the Bombay Rent Act, as discussed above, the Court of the Civil Judge

(J.D.) would have continued to exercise jurisdiction to execute the decree passed by it. In the case on hand, however, the language of Section 28(1) admits of no other possible interpretation. The reference, therefore, to the judgment of B.J. Divan, J. (as he then was) in the case of Husein Nabi Bux and Ors. v. Modhia Chhotalal Mansukhlal Morarji reported in 4 G.L.R. 400, is uncalled for. Even Section 37 of the Civil Procedure Code, while defining the term "the Court which passed the decree," in Clause (b) states as follows:

Where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

This Clause (b) would squarely be attracted to the facts of the present case. In these cases, the Court of the first instance, namely, the Court of the

Civil Judge (J.D.) Baroda or Surat, ceased to have jurisdiction to execute the decree because of the operative mandate in the latter part of Section

28(1). The Court entitled to execute the decree would be the Court of Small Causes, which can be said to be "the Court which, if the suit wherein

the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

In my view, therefore, it is no use travelling beyond Section 28(1) of the Bombay Rent Act, in deciding the case on hand. Reference to analogy is

permissible as the aid of interpretation in cases where the text of the particular statute is not unequivocal. It is one of the cardinal principles of

interpretation that the text as it is, is to be accepted and extraneous aids are to be sought for only in order to clear some ambiguities divulged by the

unhappy expression. In my view, the language of Section 28(1) admits of no other interpretation and consequently, the contentions put forth by the

judgment-debtors require to be squarely rejected. Any reference to procedure as provided for in Section 37 of the Rent Act or the absence of any

provision for transfer are all lame guides, if at all their assistance could be invoked. Even the judgment of the Division Bench of the Gujarat High

Court in the case of Mehta Keshavlal Pragji v. Batia Dwarkadas Gokaldas reported in 10 G.L.R. 857 is of little application. In this view of the

matter, I hold that the pending execution applications in the Court of the Civil

Judge (J.D.) or the Civil Judge (S.D.) on the day the Court of Small

Causes under the provincial Small Cause Courts Act came to established will be required to be transferred and the subsequent execution

applications for executing the decrees passed by those Courts till then also will be required to be presented to the Court of the Small Causes. In

my view, therefore, the view taken by the Small Causes Court at Baroda and Surat is the only plausible and reasonable view.

13. This brings me to the special facts of some of these Revision Applications which are required to be dealt with in order to dispose of these

Revision Applications. In C.R.A. No. 182/77, there is no other question and this Revision Application, therefore, will be required to be rejected

forthwith. This Revision Application is accordingly rejected with no order for costs. But six months time is given to the applicant judgment-debtor

either to vacate the premises or to have further recourse in accordance with law.

14. In C.R.A. No. 536/78, there is no other point except the one of jurisdiction of the Court of Small Causes. So, in that Civil Revision

Application also rule is discharged with no order as to costs. But, at the request of Mr. P.B. Majmudar, for the judgment-debtor, time to execute

is extended upto 30th September, 1980, provided the judgment-debtor files an usual undertaking with this Court that latest by that date he would

voluntarily deliver the possession of the premises in question to the landlords and would also procure the consent of all the adult members of his

family to this undertaking. If such an undertaking is not filed within a fortnight from today, the decree shall be executable forthwith.

15. In C.R.A. Nos. 895/78, 1377/78 and 1378/78, one more point was canvassed before me. The judgment-debtors contested the original

decree upto the Supreme Court. At that time, the execution proceedings were pending in the competent Court, namely the Court of the Small

Causes, Baroda. The Supreme Court rejected the tenants' plea but granted one year's time to vacate. The learned Judge in these three matters

misinterpreted the Supreme Court's order suspending the execution of the decree for one year and proceeded to dispose of the execution

applications, ex parte. On coming to know of such orders passed behind the back, the judgment-creditor requested the learned Judge to restore

the execution applications which were accordingly restored and proceeded with.

The learned advocate, appearing for the respective judgment-debtors, however urged that once the execution application was dismissed, the only course left open to the judgment-creditor was to file a fresh application. In the facts and circumstances of these three Revision Applications; I find that this plea is a further unfair attempt on the part of the judgment-debtors to prolong the proceedings. The order of disposing of the execution application was ex facie an order passed without hearing and therefore was nonest and therefore on the true state of affairs being brought to the notice, the learned Executing Judge did what he was required to do, namely, reviving the execution application. Neither legally nor morally the learned Judge did anything wrong. So, this plea does not deserve to be at all entertained. The rule in Revision Applications Nos. 895/78, 1377/78, and 1378/78, therefore, is discharged with no order as to costs. But three months' time is given to the applicant-tenants either to vacate the premises or to have further recourse in accordance with law.

16. In C.R.A. No. 1377/78, one further point was canvassed by Mr. Majmudar. The judgment-debtor is the son of the deceased-tenant, against whom the decree was passed. The son had filed a substantive suit challenging the decree, but he had lost in all the Courts, including the High Court. Even then, Mr. Majmudar contended that the ex parte decree against the judgment-debtor's father would not be executable against him.

This contention is noted only for its rejection. In the Revision Application, one more contention was also raised, namely, that only two out of the three judgment-creditors could not execute the decree. However, Mr. Majmudar himself was fair enough to say that the settled legal position in this High Court is that such an execution application was maintainable and Mr. Majmudar himself fairly conceded to this legal position.

17. In C.R.As. Nos. 1379/78, 1451/78 and 1158/79, no other extra point was urged. These Revision Applications also are therefore required to be rejected. They are accordingly rejected with no order as to costs. But three months' time is given to the applicant-tenants in these three applications either to vacate the premises or to have further recourse in accordance with law.

18. In the above view of the matter, subject to the time-limit for vacating as stated above, the rule is dischargee! in C.R.As. Nos. 182/77, 536/78,

895/78, 1377/78, 1378/78, 1379/78, 1451/78 and 1158/79, with no order as to costs.

C.R.A. No. 1454/78, though by the judgment-debtor, is filed against the order of the learned Civil Judge (J.D.) who held that he has got

jurisdiction to execute the decree even after the establishment of the Small Causes Court at Surat. On the above view of mine, the impugned order

is required to be set aside and accordingly C.R.A. No. 1454/78 is allowed. Rule is made absolute with no order as to costs.