

(1944) 11 BOM CK 0013

In the Bombay High Court

Case No : Civil Revision Applications No's. 196 , 269 and 320 of 1944

Premchand Mahasukhbhai

APPELLANT

Vs

Chamanlal Ranchhoddas

RESPONDENT

Date of Decision : 06-11-1944

Acts Referred:

Bombay Rent Restriction Act, 1939 — Section 11
Transfer of Property Act, 1882 — Section 111(h)

Citation : AIR 1945 Bom 470 : (1945) 47 BOMLR 410

Hon'ble Judges : Rajadhyaksha, J

Bench : Single Bench

Judgement

Rajadhyaksha, J.—These three companion applications in revision arise out of three suits filed in the Second Class Subordinate Judge's Court at Ahmedabad by the opponent against his three tenants in respect of properties situated within the limits of the city of Ahmedabad. The suits were filed by the plaintiff for recovering possession and arrears of rent in respect of the three suit properties. The leases in suits Nos. 1106 and 1107 of 1943 out of which Civil Revision Applications Nos. 192 and 320 of 1944 arise are dated April 8, 1943, while the lease in suit No. 1108 out of which Civil Revision Application No. 269 of 1944 arises is dated April 6, 1943.

2. In all the three suits it was contended by the plaintiff that the period of lease had expired on September 11, 1943, on which date the possession of the properties in suits was to be handed over by the respective defendants to the plaintiff. The contentions of the defendants in the three suits were common in several particulars, although in suits Nos. 1107 of 1943 and 1108 of 1943 there were certain additional contentions taken by the respective defendants. The principal ground on which the suits were resisted¹ was that the Court had no jurisdiction to hear the suits for possession and rent, that the notice to quit was not valid and that the suits were barred by reason of Section 11 of the Bombay Rent Restriction Act. The contention raised u/s 11 was that the tenants were not liable to be evicted as the plaintiff did not require the suit properties bona fide for

his own occupation. Without prejudice to this contention, it was further submitted by the three defendants that the plaintiff had orally agreed to lease the properties for a period of five years more after September 11, 1943. In suit No. 1107 of 1943 there was the additional contention that the Panch Kuva Cloth Market Association had passed a resolution to the effect that no owner of a building should get the same vacated by his tenant for a period of five years; and it was alleged that by reason of this resolution the plaintiff was not entitled to recover possession. In suit No. 1108 of 1943 the additional contention was that the defendants were a firm, and that the suit was not maintainable without joining the partners of the firm, as parties to the suit.

3. After these contentions were taken a preliminary issue was raised as to whether the Court had jurisdiction to hear the suit, and the Third Joint Subordinate Judge, Ahmedabad, before whom the suits were pending, came to the conclusion that he had jurisdiction to hear the suit and he, therefore, ordered that the suits be kept for hearing on other issues. It is against that order that the three defendants have come in revision.

4. The first contention raised by the learned advocate for the applicants was that the mere raising of a contention based on the Rent Restriction Act does not oust the jurisdiction of the Small Causes Court to hear the suit and as the suits were, *prima facie*, cognizable by the Court of Small Causes, the learned Subordinate Judge before whom the suits were pending should have held that he had no jurisdiction to hear the suits and the plaints should have been returned for presentation to the proper Court.

5. The question whether the Court of Small Causes had jurisdiction to hear the suits must be determined by reference to the Provincial Small Cause Courts Act. Under Article (4) of the Provincial Small Cause Courts Act, as amended by Bombay Act VI of 1930 and Bombay Act IX of 1932, a suit for possession of Immovable property or for the recovery of interest in such property is not cognizable by the Court of Small Causes unless" (a) the property has been let under a lease made by a written instrument or orally; (b) the Court of Small Causes would be competent to take cognizance of a suit for the rent of the property; and (c) the only substantial issue arising for decision is as to whether the lease has determined by efflux of the time limited thereby or has been determined by a notice in accordance with Clause (h) of Section 111 of the Transfer of Property Act, 1882." It is thus clear that where there is any substantial issue arising for decision other than the determination of lease by efflux of time or by notice under Clause (h) of Section 111 of the Transfer of Property Act, the Court of Small Causes would have no jurisdiction to hear a suit for possession of Immovable property or for the recovery of any interest in such a property. It has been held by this Court in *Bai Hari v. Nathubhai Parbhubhai* (1938) 41 Bom. L.R. 755 and *Bai Jivkore Lakshmiram Vs. Himatlal Girdharlal Parekh*, , that whether the question at issue is substantial or not must be determined having regard to the averments made in the plaint and the

contentions taken in the written statement. In *Bai Hari v. Nathubhai* Mr. Justice Macklin observed that "there can be no question at issue unless there is a difference between the parties, and in, order to determine what the issue is, we have to consider the allegations of both sides." The question, therefore, whether the Court of Small Causes had jurisdiction or not must be determined having regard to the contentions taken by the defendants in the three suits.

6. It is undoubtedly true that when the suits were filed they were, *prima facie*, cognizable by the Court of Small Causes as the only averment of the plaintiff was that the tenancy had come to an end by efflux of the time; and if this was the only contention between the parties, there can be no doubt that the learned trial Judge, viz. the Second Class Subordinate Judge of Ahmedabad would have had to hold that he had no jurisdiction to hear the suit and the plaint would have had to be returned to the plaintiff for presentation to the proper Court. But in the written statement although it was generally stated in Clause (3) thereof that the Court had no jurisdiction to hear a suit for possession and rent, several other contentions were taken in addition to this one. It was stated that the notice was not valid and that the plaintiff was not entitled to obtain possession by reason of the protection which was given to the tenants u/s 11 of the Bombay Rent Restriction Act. It was without prejudice to these contentions that several other contentions were taken, viz. that there was an oral agreement under which the plaintiff had agreed to let the suit properties to the respective tenants for a further period of five years. That being so, the learned Judge raised the issue whether at that stage he was entitled to proceed with the suit or whether the suit in the form in which it was before him at that stage could be tried by the Court of Small Causes. The argument of the learned advocates for the applicants was that the contention based on Section 11 of the Bombay Rent Restriction Act would not oust the jurisdiction of the Small Causes "Court and that in spite of the contention based on the Bombay Rent Restriction Act, the suits were still cognizable by the Court of Small Causes. In, this connection my attention was invited to the orders which have been passed by this Court in various civil revision applications. In *Chhidlal Shaligram v. Hariram Ramji* (1942) C.R.A 469 decided by Wassoodew J., on January 9, 1942 (Unrep.). Mr. Justice Wassoodew merely referred to the contentions which had been taken by the defendant that the premises were not required by the landlord, bona fide for his own occupation within the meaning of Section 11 of the Bombay Rent Restriction Act. But he did not proceed to consider whether such a contention would oust the jurisdiction of the Court of Small Causes. In *Seth Maneklal v. Shah Bhagubhai* (1943) C.R.A 566 decided by Divatia and Weston JJ., on October 10, 1943 (Unrep.) which came up for hearing before Mr. Justice Divatia and Mr. Justice Weston, although there was a defence taken that the tenants could not be evicted under the provisions of the Rent Restriction Act, the question whether such a defence would oust the jurisdiction of the Small Causes Court or not was neither raised nor decided. The learned Judges in that case merely came to the conclusion that on the contentions of the parties the real question for determination was as regards

the determination of the lease by efflux of time. The point, however, did arise for consideration in *Shamchand Tribhuvandas v. Sha Narottamdas* (1944) C.R.A 213 decided by Lokur and Rajadhyaksha JJ., on January 4, 1944 (Unrep), which was heard by Mr. Justice Lokur and myself. It is true that that was a case under the Rent Restriction Order, 1942; but in principle it makes no difference whether the defence arises under the Rent Restriction Act or under the Rent Restriction Order. We observed therein:

But the issues do not arise out of the plaint alone, but out of the pleadings of all the parties, and it is after the written statement is put in that it can be ascertained what substantial issues have to be decided in the suit. Sub-clause (c) of Clause (4) of the second schedule clearly lays down that if there is any other substantial issue to be decided, except the issue regarding the determination of the lease either by efflux of the time or by sufficient notice, the jurisdiction of the Court of Small Causes is ousted. The object of such a clause obviously is that no other substantial question should be tried by the Court of Small Causes in a summary manner.

7. This division bench ruling was followed by Mr. Justice Macklin in *Fidaally Usufally v. Bai Kripa* (1944) C.R.A 76 decided by Macklin J., on September 18, 1944 (Unrep.), which was a case under the Bombay Rent Restriction Act. It was also followed by Mr. Justice Weston in *Kamalabai v. Keshav Balvant* (1944) C.R.A 8, decided by Weston J., on September 14, 1944 (Unrep.), which was a case under the Bombay Rent Restriction Order, 1942. I am bound by the division bench ruling in *Shamchand Tribhuvandas v. Sha Narottamdas* to which I myself was a party and hold that when in resisting a suit a contention is taken based on the Bombay Rent Restriction Act—a contention which, if it succeeded, would defeat the plaintiff's suit, then it is a substantial contention the raising of which would oust the jurisdiction of the Court of Small Causes. It was pointed out that under the provisions of Section 3 of the Bombay Rent Restriction Act, any question under the Act arising for decision by a Court should be determined by the Court having cognizance of the suit in relation; to which such a question arises, and it was argued that this section would enable a Court to determine questions under the Act if otherwise the suit was cognizable by a Court of Small Causes. And in this connection my attention was invited to the decision of Mr. Justice Weston in *Ahmedabad District Local Board v. Ratilal Manilal* (1944) C.R.A 607 decided by Weston J., on July 4, 1944 (Unrep.). The learned Judge appears to have held therein that if a Small Causes Court has jurisdiction under the Provincial Small Cause Courts Act to try a suit in ejectment, that jurisdiction will not be destroyed because a question arises under the Bombay Rent Restriction Act. The learned Judge was careful enough to say that the jurisdiction will not be destroyed if, in the first instance, the Small Causes Court has jurisdiction under the Provincial Small Cause Courts Act to try a suit in ejectment. Whether the Court of Small Causes has jurisdiction under the Provincial Small Cause Courts Act to try a suit in ejectment must be determined by reference to the provisions of the Bombay Provincial Small Cause Courts Act and if in trying that suit some

question which is not of a substantial nature arises under the Bombay Rent Restriction Act, then it is clear that the jurisdiction of the Court of Small Causes is not ousted. But if the learned Judge intended to lay down that even if a substantial question under the Bombay Rent Restriction Act arises the Court of Small Causes would have jurisdiction to hear the suit, then I must, with respect, differ from that interpretation, because it seems to me that it is in conflict with the division bench ruling in Shamchand's case. A similar argument was addressed to Mr. Justice Macklin in *Fidaally Usufally v. Bai Kripa* (1944) C.R.A 76 decided by Macklin J., on September 18, 1944, (Unrep) and the learned Judge considered that argument in the following paragraph of his judgment:

It is however argued that Section 3 of the Bombay Rent Restriction Act saves the jurisdiction of a Court which would have jurisdiction but for the passing of the Act, and that in this case no question arising out of the Act could have arisen in the suit but for the passing of the Act; so that the suit, but for the passing of the Act., must be deemed to be one in which no substantial question arose for decision other than, the determination of the lease by efflux of time or notice. It is an ingenious argument. But the fact remains that a substantial issue other than the issue provided in the Bombay Amendment does arise in this case; and therefore the Small Cause Court has *prima facie* no jurisdiction. That being so, the effect of Section 3 is to. preserve the existing jurisdiction, which is the jurisdiction of any Court other than the Small Cause Court.

8. With respect I am in agreement with that view. Mr. Justice Weston himself held in *Kamalabai v. Keshav Balvant* that an issue arising u/s 8 of the Bombay Rent Restriction Order, 1942, is a substantial issue, in that, if the defendant succeeds, the suit must fail. By parity of reasoning an issue raised u/s 11 of the Bombay Rent Restriction Act would be a substantial issue, and in my opinion when such an issue is raised, the Court of Small Causes would have no jurisdiction to hear the suit. The learned Third Joint Subordinate Judge was, therefore, in my opinion, right in holding that the defendants having raised those issues based on the protection given to them by the Bombay Rent Restriction Act, the suit was not one cognizable by the Court of Small Causes and could only proceed in the Court of the Second Class Subordinate Judge at Ahmedabad.

9. In addition to this, the defendants also raised several other defences. One defence which was common to all the three suits was that the plaintiff had orally agreed to lease the property for a period of five years from September 11, 1943. This contention raised several issues which the learned Judge has pointed out in para. 4 of his judgment, viz. (a) whether, in fact, there was such an oral agreement to renew the lease for a further period of five years; (to) whether such a plea based on an oral agreement could be taken in answer to the plaintiff's suit (c) whether such an agreement was valid in law and admissible in evidence. In addition to this, in Regular Suit No. 1107 of 1943 there was a further contention that the plaintiff was not entitled to bring a suit for eviction because of a resolution which was passed by the Panch Kuva Cloth Market

Association that no owner of a building should evict his tenants for a period of five years. In Regular Suit No. 1108 of 1943 there was a contention taken that as the defendant was a firm other partners in the firm were necessary parties to the suit. But as these contentions were taken without prejudice to the contentions based on the Bombay Rent Restriction Act, they could not have been considered by the learned Judge if he was of opinion that apart from those contentions, the suit was cognizable by the Court of Small Causes. But as the learned Judge has, in my opinion, rightly held that by reason of the contentions based on the Bombay Rent Restriction Act the suit was not cognizable by the Court of Small Causes, there was no objection to his considering the other contentions raised by the defendants as supporting his conclusion that the Court of Small Causes had no jurisdiction.

10. The last point urged by the learned advocate Mr. N.C. Shah was that the suit when filed was filed in the wrong Court as prima facie the suit was cognizable by the Court of Small Causes and should have been instituted in that Court. If in answer to the plaint, the defendants had only restricted themselves to that plea and raised no other contention, the plaint would undoubtedly have had to be returned for presentation to the proper Court. But the defendants did not stop short at taking that defence. They also raised the defence based on the Bombay Rent Restriction Act, and having taken that, defence, it was for the Court to consider whether at that stage it was entitled to proceed with the suit. In view of the contentions taken, I think the learned Judge was right in holding that the Small Cause Court had no jurisdiction to hear the suits. In any case, I see no point in setting aside the order of the learned Subordinate Judge, directing the plaints to be presented to the Court of Small Causes and then on the defendants taking these contentions the plaints again being returned for presentation to the proper Court which would in this¹ case again be the Court of the Second Class Subordinate Judge.

11. I am, therefore, of opinion that the order passed by the learned Subordinate Judge is correct, and the rule in the three applications must, therefore, be discharged.

12. In view of the fact that the suits were originally filed by the plaintiff in a Court which had at that stage no jurisdiction to hear them but was vested with the jurisdiction by reason of the contention taken by the defendants, I do not think that there should be any order as regards costs.

13. The record and proceedings should be set down immediately.