

(1989) 03 BOM CK 0031

In the Bombay High Court

Case No : Civil Revision Application No. 564 of 1987

R.J. Mehta, President Engineering Majdoor Sabha and Another	APPELLANT
Vs	
Govind Ramchandra Nadkarni	RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28

Citation : (1989) 2 BomCR 175 : (1989) MhLj 809

Hon'ble Judges : T.D. Sugla, J

Bench : Single Bench

Advocate : C.A. Phadkar and B.S. Purohit, for the Appellant; Party in person, for the Respondent

Judgement

T.D. Sugla, J.—The petitioners-original defendants have challenged the impugned judgment dated 9th July, 1987 passed by the Judge, Small Causes Court, Bombay. The respondent-original plaintiff-had filed a suit in the Small Causes Court, Bombay being R.A. Declaratory Suit No. 3623 of 1982. He also took out Injunction Notice No. 3102 of 1983 inter alia for mandatory injunction restraining the defendants, their servants and/or agents from keeping the dogs in common passage outside the suit premises, i.e., Room No. 5 on the 2nd floor of Kennedy House, Gamdevi, Bombay 400 007 or any part of the passage leading to the suit premises or leading to the common lavatory on the 2nd floor etc. This was resisted by the petitioners herein on the ground that the Small Causes Court has no jurisdiction to decide such an issue. By his aforesaid impugned order the Judge, Small Causes Court held that the Court has jurisdiction to entertain and try the suit u/s 28 of the Bombay Rent Act and directed the injunction to proceed on merits.

2. It is against this order that the petitioners (original defendants) have come up before this Court by way of revision application. Shri Phadkar and Shri Purohit, the learned. Counsel appearing for the petitioners reiterated that the Small Causes Court did not have jurisdiction to proceed with the injunction notice on

merits. In this context they referred to the provisions of sections 28 of the Bombay Rent Act, 1947 for the purpose of showing that the special Court i.e., Small Causes Court had a limited jurisdiction as regards suits or proceedings 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 Act apply. Since the injunction sought for had no direct nexus with the recovery of rent or with the possession of the premises the Small Causes Court did not have jurisdiction to proceed with the injunction notice. In response to a query from the Bench, Shri Phadkar fairly stated that it is not as if the respondent was remediless. The respondent, if he felt aggrieved, could approach the City Civil Court or a Criminal Court for the purpose. Strong reliance in this behalf was placed on a Single Judge's judgment of this Court in the case of Omprakash Tulsiram and Others Vs. H.J. Leach and Co., . It was pointed out that in that case a suit was filed by a tenant against the landlord for restraining the landlord from causing obstruction to his right of way leading to the tenant's premises by dumping heavy material on the passage. It was held that the Small Causes Court did not have jurisdiction and that the suit could be filed before the City Civil Court.

3. The respondent who is an Advocate appeared in person. He stated that the arguments advanced on behalf of the petitioners are not tenable and have been rightly rejected by the trial Court. In this context he pointed out that the learned Counsel for the petitioners have given a limited and restricted meaning to the expression "relating to the recovery of rent or possession of any premises" used in section 28 of the Bombay Rent Act, 1947. For this purpose he placed reliance on a Full Bench judgment of this Court in the case of Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, . It was stated that the expression used in section 28 is "relating to" which is much wider than the expression "simply recovery of rent or possession".

4. I have carefully gone through section 28 of the Bombay Rent Act, 1947 as well as the Full Bench judgment and the Single Judge's judgment of 1965 and 1989 respectively of this Court. It is true that in 1989 Mh.L.J. 51 the learned Single Judge has held that a mere interference with the access amounting to interference with the right to quiet enjoyment but without any element relating to recovery of possession cannot be considered as a claim or question arising out of possession cannot be considered as a claim or question arising out of Bombay Rent Act, and, therefore, such a suit does not fall u/s 28 of the Bombay Rent Act. However, the facts in this case are, according to me, different and the ratio of the Full Bench decision in Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, would more appropriately apply. It is pertinent to mention that the Full Bench has discussed the purport and scope of section 28 of the Bombay Rent Act in paragraphs 5, 6, 7 and 8 of the judgment. It is really not necessary to reproduce those paragraphs herein. Suffice it to say that the Full Bench has appreciated and held that there are three matters in respect of which exclusive jurisdiction is conferred on the special Court u/s 28 of the Bombay Rent Act, viz.,---

- (i) it must be a suit or a proceeding between a landlord and tenant;
- (ii) the suit or proceeding instituted either by the landlord or by the tenant must be in the capacity as landlord or the tenant as the case may be; and
- (iii) the suit of proceeding must relate to recovery of rent or possession of such premises.

The Full Bench also appreciated that the expression used in the section is "relating to recovery of rent or possession" and not "for recovery of rent or possession". The words "relating to" are wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. It has been held that section 28 confers jurisdiction upon the special Court not only to decide questions referred to in the section but also all matters which are incidental or ancillary to the determination of such question.

5. Therefore, it is in this context that one has to see the prayer of the respondent herein in his injunction notice. The allegation is that the petitioners are keeping dogs and barrels in the passage leading to the respondent's premises, i.e., Room No. 5 on the 2nd floor and the common lavatory. The dogs are ferocious. The respondent is a practising Advocate. His clients cannot come to him because of the menace so created by the petitioners. Even he finds it difficult to enjoy the possession of the suit premises. No doubt the learned Counsel for the petitioner at this stage stated that the petitioner had not disturbed the possession of the respondent of the suit premises and that even the dog were now kept on the 4th floor. However, all that is to be considered on merits. The question before this Court is a limited one. It is when the suit premises are given possession but access to the premises is not obstructed causing merely some inconvenience, and is obstructed absolutely, can one say that the grievance is not relating to the possession. It is not possible for me to accept the petitioners contention that the dispute herein is not relation to the possession of the suit premises by a tenant against the landlord. Accordingly the petition is rejected. Rule is discharged with no order as to costs.

6. On the application on behalf of the petitioners, the stay is continued for two months from today in order to enable the petitioners to move the Hon'ble Supreme Court, if they so desire.