

(1984) 09 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 2491 of 1984

Shakuntala Balwant Gadgil

APPELLANT

Vs

Shubhada Suhas Kulkarni

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 9A

Citation : (1985) 1 BomCR 231 : (1985) MhLj 77

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : S.B. Gupte, for the Appellant;

Judgement

Sharad Manohar, J.—The point involved in this writ petition is extremely narrow. The question is as to whether a particular issues raised by the defendant should be treated as a preliminary issue or not. For the reasons which will be presently mentioned herein, the learned Judge ought to have seen that the determination of the issue falls in very narrow compass and by the determination of the said issue the entire suit could be disposed of one way or the other hence the learned Judge should have himself seen, in the circumstances of the case, that the said issue ought to have been tried by him as a preliminary issue.

2. The facts are very simple. The suit premises are situate in village Ayare, Taluka Kalyan, Dist. Thane. Admittedly the plaintiff is the owner of the building in which the premises are situate and the defendant has been the tenant of the same. According to the plaintiff, he terminated the defendant's tenancy by a notice dated 9-8-1982 and called upon him to hand over the possession of the premises. The defendant failed to comply with the notice and hence the suit for possession.

The contention of the plaintiff in the suit has been that the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act") does not apply to the area in which the premises are situate and hence the

mere termination of the tenancy under the Transfer of Property Act gave a complete cause of action to the plaintiff to file the suit for the defendant's eviction.

3. The defendant filed his written statement in which he has raised various pleas by way of defence. We are not really concerned with all of them in this petition. The only plea relevant for the purpose of the petition is that according to the defendant Rent Act did not apply to the area in which the premises are situate. The Issue No. 2 is as follows :

Whether the plaintiff proves that the Bombay Rents Act is not applicable to the suit premises ?

4. Thereafter on 12-9-1983, the plaintiff made application Exhibit 26 to the trial Court contending that in case it was held that the Rent Act applied to the suit premises the Court will not have jurisdiction to try this suit. The prayer that was made, therefore, was that the said issue relating to the jurisdiction of the Court should be tried as a preliminary issue and that the Court should try the same expeditiously. In view of this application Exhibit 26, dated 12-9-1983, the Court in fact framed additional issue, Issue No. 2-A, on the question as to whether the Court had jurisdiction u/s 28 of the Rent Act or its ordinary jurisdiction under the Transfer of Property Act.

On the main application Exhibit 26, however, the learned Judge passed an order dismissing the same with the costs. It is somewhat difficult to understand the reason why the learned Judge has chosen to dismiss the said application. At the fag end of this order the learned Judge has observed that the defendant has not raised the objection to the Court's jurisdiction in his say to the application for injunction. The learned Judge has also referred to the judgment of this Court reported in 1983, Maharashtra Law Journal page 141, in the case of Kranti Mohan v. Fatehchand, and held that the said ruling would not apply in view of the fact that the defendant had not questioned the jurisdiction of the Court to entertain the suit. Whether that may be the fact remains that the plaintiff's application for determination of the said issue as a preliminary issue has been turned down by the trial Court. It is this order which is challenged by the plaintiff in this petition.

5. To my mind, the learned Judge has taken a hyper-technical view of the matter. It is true that u/s 9-A of the CPC it may not be strictly incumbent upon the Court to try the particular Issue No. 2 or the additional Issue No. 2-A as the preliminary issue. But what the learned Judge has not lost sight of is that the Court always has jurisdiction to treat any particular issue as a preliminary issue if the Court is satisfied that the trial of the suit itself would be obviated in case the finding on the issue goes to the root of the Court's jurisdiction to grant any relief to the plaintiff. It is also true that the judgment of this Court reported in 1983 Maharashtra Law Journal, page 141, has no application to the question raised before the Court. All that was decided by this Court in the said judgment was

that once the preliminary issue regarding the Court's jurisdiction has been decided by the Court one way or the other and once the Court has held that it has got jurisdiction to decide the suit, it is not necessary to decide the issue once again at the time of the trial of the suit. It is in that sense that this Court has held in that case that the question of jurisdiction to be decided by the Court as per section 9-A of the CPC has to be decided finally and once for all, although the hearing has been of the preliminary issue only. The ratio of the said case has no application in the question involved in this petition.

But the position still remains that the findings on Issues Nos. 2 and 2-A is bound to decide the fate of the suit one way or the other. In case, it is held in the instant case that the premises are governed by the Rent Act, then the plaintiff's suit will have to be dismissed in limine because admittedly the plaintiff has not made out any case for the defendant's eviction as per the provisions of the Rent Act. Mr. Gupte appearing for the petitioner made a categorical statement before us to the same effect namely that if the Rent Act applied to the suit premises the suit shall have to be dismissed in limine. On the other hand if the Rent Act does not apply to the suit premises then the defendant will have no defence to the suit except the plea that the notice of termination of tenancy was not valid one. All that the Court will be required to enquire into would be as to whether the notice is valid or not. If the Court comes to the conclusion that the notice is valid the only course open for the Court is to pass a decree for eviction. On the other hand, if the Court comes to the conclusion that the notice is invalid, the Court shall have no other option but to dismiss the suit.

6. It will be thus seen that Issues No. 2 and 2-A really involved one and the same question and in reality it is one issue and if they are tried it will result in quick disposal of the suit. The Court must take every opportunity for disposing of the litigation in such an expeditious manner. No doubt the action aiming at expeditiousness must be within the four corners and four walls of the CPC and of the other procedural law; but if the Court gets an opportunity to dispose of the litigation expeditiously, the Court must avail of the opportunity.

7. In the instant case the decision of Issues 2 and 2-A is bound to be decisive to a very large extent. The learned Judge, therefore, was in error in not allowing the said application Exhibit 26.

8. The rule earlier issue is, therefore, made absolute. The order passed by the learned Judge dismissing the application Exhibit 26 is hereby quashed and set aside the trial Court is directed to decide the said two issues. Issues Nos. 2 and 2-A as preliminary issues. The trial Judge shall give his decision on the said issues within 4 weeks from the receipt of the record from this Court.

9. In case the learned Judge comes to the conclusion that the Rent Act applies to the suit premises the learned Judge shall proceed to pass a decree of dismissal of this suit on the ground that the plaintiff has no cause of action to file the suit having regard to the provisions of the Rent Act. If on the other had the learned

Judge is of the view that the Rent Act does not apply to the suit then the learned Judge shall proceed immediately to enquire into the question as to whether the notice of termination of tenancy given by the plaintiff was valid or not. If the learned Judge finds that some evidence is required to be led on this issue as well as on the preliminary Issues 2 and 2-A he shall be at liberty to allow the parties to lead evidence in that behalf. The learned Judge shall however see to it that the decision on the issue is not delayed.

10. As stated above the rule is made absolute with the directions mentioned above. However, since there is no appearance on behalf of the respondent there shall be no question of costs being paid to the respondent defendant at any time.

So far as the petitioner plaintiff is concerned, the costs shall be the costs in cause.