

(1971) 09 GUJ CK 0021

In the Gujarat High Court

Case No : Civil Revision Application No. 869 of 1971

Shri Maharana Mills Pvt. Ltd.

APPELLANT

Vs

Harvadan Manharrai and Others

RESPONDENT

Date of Decision : 22-09-1971

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29, 29(3)

Citation : AIR 1972 Guj 226 : (1972) GLR 522

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : Y.S. Mankad, for the Appellant; Suresh M. Shah, for the Respondent

Judgement

1. This civil Revision Application raises a question of jurisdiction of the District Court to entertain Revision applications against interlocutory orders made in suits governed by Section 28 of the Bombay Rent Act.

2. The material facts of the case are as under.

The plaintiffs have filed Civil Suit No.245 of 1967 in the Civil Court at Bhuj for recovery of possession of the suit premises. It is not in dispute before me that the subject matter of the suit is governed by Section 28 of the Bombay Rent Act. The grounds on which the plaintiffs seek decree for possession are: (1) unlawful sub-letting of the suit premises by the defendant No.1 to the defendant No.2 and (2) the irregularity in payment of rent and consequent breach of a term of tenancy. In course of the proceedings an application for amendment of plaint was made and it was granted. By the said amendment the plaintiffs added one more ground in support of their claim for possession. It is non-user of the suit premises for more than six months without any reasonable cause. The defendants filed in the first instance written statement to the plaint. It did not contain any plea for fixing standard rent of the suit premises. Later on, in answer to the amended plaint they filed a further written statement wherein they raised the plea that standard rent of the suit premises be fixed. Pursuant to that plea

having been taken by the defendants the learned Trial Judge raised issue No.10A on the point. The plaintiffs thereafter made application Ex.86 for deletion of issue No.10A. That application was rejected. The plaintiffs, therefore, filed a revision application before the District Court at Bhuj challenging the said order made by the learned Trial Judge. The learned District Judge allowed that revision application and set aside the order made by the learned Trial Judge and directed that issue No.10A be deleted.

3. It is that order made by the learned District judge which is challenged before me in this civil Revision Application.

4. The question which has been canvassed before me by Mr. Mankad relates to the jurisdiction of the District Court to entertain a revision application of this type u/s 29(3) of the Bombay Rent Act. He has raised the question in the following terms:--

"Whether a revision application lies to the District Court against an order refusing to delete an issue raised in a suit which is governed by the Bombay Rent Act."

This very question was raised before the learned District Judge and he has answered it in the affirmative for the reasons stated in his judgment.

* * * *

Section 31 of the Bombay Rent Act provides as follows:

"The courts specified in Sections 28 and 29 shall allow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them".

All that Section 31 of the Bombay Rent Act does is to render applicable the prescribed procedure to actions the subject-matter of which is governed by the Bombay Rent Act. The word "prescribe" has been defined by Section 5(9) so as to mean "prescribe by rules". Section 49(2)(iii) empowers the State Government to make rules for the purpose of regulating the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders. Turning to the Bombay Rent Rules framed by the State Government under the Bombay Rent Act. I find different sets of procedure having been laid down for three different kinds of Courts. One set of procedure has been laid down in Chapter IV for being followed by the Court of Small Causes at Ahmedabad whose constitution is governed by the Presidency Small Causes Courts Act. The second set of procedure has been laid down in Chapter IV-A of the Bombay Rent rules for being followed by the Courts of small Causes established under the Provincial Small Causes Courts Act, 1887 and by the District Courts in appeals from their decisions. The third set of procedure has been laid down in Chapter V of the Bombay Rent Rules for being followed by the Courts of Civil Judges (Junior Division) or (Senior Division) and by the District Courts in appeals from their decisions. So far as the present suit is concerned, it is governed by the

procedure laid down in Chapter V. Rules 10 to 13 are the only constituent parts of Chapter V. They provide for special matters which do not appear to be otherwise provided for by the Code of Civil Procedure. Rule 16 in Chapter VII provides as follows.

"In deciding any question relating to procedure not specifically provided for by the rules the Court shall, as far as possible, be guided by the provisions contained in the Code."

"Code" means Code of Civil Procedure. It is difficult to agree with the tenor of the reasoning of the learned District Judge that all procedural orders made under the CPC are governed by the provisions of the Bombay Rent Act and the Bombay rent rules as if the provisions of the CPC are incorporated, by virtue of the said Rule 16, in the Bombay Rent Act or the Bombay Rent Rules. All that rule 16 provides for is that if there is no specific provision relating to any procedural matter in the Bombay Rent Act or rules made thereunder, then the Courts trying such suits shall be guided by the provisions of the Code of Civil Procedure. By virtue of Section 31 and rule 16 to which the learned Judge has referred, it is difficult to uphold the finding that all procedural orders made under the CPC in suits governed by the provisions of the Bombay Rent Act become revisable--if they are not otherwise appealable--by the District Court by virtue of the provisions of section 29(3). Section 29(3) read with Section 31 and Rule 16 does not confer upon the district Court revisional jurisdiction in matters which are purely procedural and which do not bear the imprint of the provisions of the Bombay rent Act. In the instant case, what the learned Trial Judge did was to raise an issue relating to standard rent. An attempt was made to seek its deletion. Both the raising of an issue and its deletion are purely procedural matters governed by the provisions of the Code of Civil Procedure. By no stretch of imagination it can be said that they bear the imprint of the provisions of the Bombay Rent Act or the Bombay Rent Rules or that they are otherwise governed by the said Act or the said Rules. The learned District Judge, therefore, had no jurisdiction u/s 29(3) to entertain the revision application and to examine the aforesaid order made by the learned Trial Judge.

5. Mr. S.M. Shah, appearing for the plaintiff No.3, has invited my attention to a decision of this High Court in Panchal Keshavlal Somnath and Others Vs. Chinubhai Jagjivandas, . A Division Bench of this High Court consisting of Mr. Justice A.R.Bakshi and Mr. Justice V.R. Shah was examining the question of appealability of the order made by the Court of Small Causes at Ahmedabad in an application which in its turn was made for setting aside an ex parte decree passed in a suit governed by the provisions of the Bombay Rent Act. The argument which Mr. Shah has advanced on the strength of that decision is that an application for setting aside the ex parte decree was made under O.9, R.13 of the CPC and yet the appeal from the order made therein was held to have been governed by S. 29 of the Bombay Rent Act. According to him, it was a pure question of procedure covered by the CPC and yet it was held in that case that

the appeal from that order was governed by Section 29 of the Bombay Rent Act. Section 29 of the Bombay rent Act provides for appeals and also for the exercise of revisional jurisdiction in cases whose subject matters fall within the ambit of Section 28 of the Bombay Rent Act. In my opinion, in order to determine whether an interlocutory order made in a suit governed by the Bombay rent Act is appealable to or revisable by the district Court the test which must be applied is this: What is the subject-matter of the Order? In the case before the Division Bench to which I have referred, the subject-matter of the order was an *ex parte* decree governed by the provisions of the Bombay Rent Act. If there is an order the subject-matter of which is governed by the provisions of the Bombay Rent Act, then certainly an appeal therefrom or a revision application against that order will be governed by Section 29. However the second test, in my opinion, which can be applied is this: Does the order which is sought to be appealed from or whose revision is sought affect substantive rights of the aggrieved party under the Bombay Rent Act? If the answer is in the affirmative, then the provisions of Sec. 29(3) will be attracted in order to determine whether it is appealable or revisable under the provisions of the said section. If the answer is in the negative, Section 29 will have not application. In the instant case, the subject-matter of the order which was impugned before the learned District Judge did not affect any substantive rights of the aggrieved party under the Bombay Rent Act. The subject-matter of that order was also not governed by the provisions of the Bombay Rent Act. The subject-matter of that order was whether an issue which was raised earlier should be deleted or not. It cannot conceivably fall under the provisions of the Bombay Rent Act. In a matter of this type no substantive rights of the parties under the Bombay Rent Act are affected. To illustrate this proposition, I may cite a number of instances of procedural orders which do not affect the substantive rights of a party under the Bombay Rent Act or the subject-matter of which is not governed by the provisions of the Bombay Rent Act:--

- (1) An order granting leave to amend the plaint or written statement or an order refusing leave to amend the plaint or written statement in a suit the subject-matter of which is governed by the Bombay Rent Act.
- (2) An order made for production of documents or discovery or inspection in a suit governed under the Bombay Rent Act.
- (3) An order directing a plaintiff or a defendant to furnish better and further particulars in a suit governed by the Bombay Rent Act.
- (4) An order issuing a commission for the examination of witnesses or an order refusing to issue such a commission.

These are some of the orders which may be made order the CPC and the subject-matter of which is not governed by any of the provisions of the Bombay Rent Act or the Bombay Rent rules. Such orders do not affect the substantive rights of the parties under the Bombay Rent Act. On the other hand, there are orders which

satisfy the aforesaid two tests even though they may be made under the Code of Civil Procedure, e.g., (1) an order refusing to set aside an ex parte decree on an application made for the purpose in a suit governed by the Bombay Rent Act and (2) an order refusing to restore a suit to file which was earlier dismissed and which was governed by the provision of the Bombay Rent Act. Illustrations can also be cited from the interim orders made in execution proceedings to show that some of them will fall under one category and some of them will fall under another category.

6. It is true that Section 29(3) uses the expression "order". Orders may be interim or final. Orders may be such which bear indelible imprint of the Bombay Rent Act or they may be such which do not. If there is an interim order or an interlocutory order which is made in a suit governed by the Bombay Rent Act and if it affects the substantive rights of a party under the Bombay Rent Act, the subject-matter of which is governed by the Bombay Rent Act, such an order is revisable by the District Court under Sec. 29(3). In my opinion, therefore, purely procedural orders which did not affect the substantive rights of a party under the Bombay Rent Act or the rules made thereunder or the subject-matter of which is not governed by the Bombay Rent Act or the Rules made thereunder are not the orders which attract the revisional jurisdiction of the District Court u/s 29 of the Bombay Rent Act. The order which the learned District Judge has passed belongs to this category. It was, therefore, not revisable by the learned District Judge. He has no jurisdiction to entertain the revision application and to pass any order on merits therein. In that view of the matter, the impugned order made by the learned District Judge is liable to be set aside.

7. Revision allowed.