

(2009) 09 BOM CK 0123

In the Bombay High Court

Case No : Second Appeal No. 63 of 1992

The Raj Bahadur Motilal Mills Ltd.

APPELLANT

Vs

Pune Zilla Parishad

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Provincial Small Cause Courts Act, 1887 — Section 15, 16, 25A, 26, 26(1)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 3(1)(O)
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 3 BomCR 775 : (2009) 6 MhLj 111

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : V.S. Gokhale, for the Appellant; Niteen Deshpande, for the Respondent

Judgement

Nishita Mhatre, J.—The substantial question of law involved in the present Second Appeal is whether a suit for eviction of a monthly tenant can be filed by the local authority in a Civil Court or whether it should be filed before the Small Causes Court in view of the provisions of the Provincial Small Cause Courts Act, 1887.

2. The undisputed facts in the present case are as follows:

3. Shop Nos. 3 to 7 situated on C.T.S. Nos. 434-A, 435, and 436 in Somwar Peth, Pune were obtained on rent by the appellants on 22nd January, 1959 from the District Local Board, Pune. After the enactment of the Maharashtra Zilla Parishad Act, the suit premises vested in the Pune Zilla Parishad i.e. the respondents herein. In 1984, a notice was issued by the respondents terminating the tenancy of the appellants. The second notice was issued on 29th June, 1985 by the respondents. Thereafter the respondents filed a suit for eviction against the appellants on 22nd October, 1985 under the Transfer of Property Act before the Joint Civil Judge, Junior Division, Pune. A written statement was filed by the

appellants herein contending that;

(i) the suit ought to have been filed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and that the eviction suit filed under the Transfer of Property Act was not maintainable;

(ii) that the notice terminating the 1st tenancy dated September, 1984 was not legal and valid;

(iii) that the Chief Officer of the respondents was not the competent authority to sign and verify the plaint and to file the suit.

4. The defendants, having raised the issue of jurisdiction, contended that that issue should be decided as a preliminary issue. It appears that the trial court held that the suit was maintainable and, therefore, the appellants preferred a Writ Petition being Writ Petition No. 6008 of 1988. This Court by its order dated 10th March, 1989, allowed the Writ Petition to be withdrawn while granting liberty to the petitioners i.e. the appellants herein to point out to the trial court that the suit was not maintainable in view of the applicability of Section 26 of the provisions of the Provincial Small Cause Courts Act, 1887 (for short "the Act of 1887"). The trial court, on the basis of the issues framed, decreed the suit by concluding that the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not applicable and that the suit was maintainable before the Civil Court. Aggrieved by this decision, Civil Appeal No. 693 of 1989 was filed by the appellants before the District Court, Pune. The District Court, Pune, held that the suit was maintainable before the trial court and that the provisions of the Provincial Small Cause Courts Act, 1887 were not applicable to the present case. Hence, the present Second Appeal.

5. Mr. Gokhale appearing for the appellants submits that both the trial court as well as the appellate court have erred in deciding that the suit is maintainable before the trial court. He concedes that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would not be applicable to the present case, in view of the fact that the respondent is a local body. He submits that the provisions of the Provincial Small Cause Courts Act, 1887 will certainly be applicable and therefore the suit was not maintainable before the Civil Court. According to him, considering the provisions of this Act, the suit ought to have been instituted before the Small Causes Court. The learned Advocate further points out that both the courts below have erred in observing that the question of jurisdiction is a mere technicality as that issue would go to the root of the matter. Mr. Gokhale further candidly submitted that the issue as to whether the appellants are a sick industrial company and, therefore, was entitled to have all proceedings instituted against it stayed would not arise now. He points out the order of the Board for Industrial and Financial Reconstructions in which the Board had noted that the sanctioned scheme had been substantially implemented and that the company i.e. the appellants herein had ceased to be a sick industrial company within the meaning of Section 3(1)(O) of the Sick Industrial Companies

(Special Provisions) Act, 1985.

6. Thus, the only issue which is to be considered in the present Second Appeal is the substantial question of law as afore stated. The plaintiffs' -respondents. contention in the plaint was that the suit had been filed u/s 106 of the Transfer of Property Act and, therefore, it was maintainable before the Civil Court. According to the plaintiffs-respondents, the defendants, i.e. the appellants herein, were in arrears of payment of rent and, therefore, there was a breach of an agreement committed by them. The plaintiffs have filed the eviction suit on this ground.

7. The provisions of the Provincial Small Cause Courts Act, 1887 have been enacted to consolidate and amend the law relating to the courts of small causes established beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras and Bombay. Chapter III of this Act deals with the jurisdiction of Courts of Small Causes. Section 15 contained in this Chapter specifies suits of which the Small Causes Court can take cognizance. Section 16 provides that the Court of Small Causes has exclusive jurisdiction to try any suit cognizable by it. The Maharashtra Act 24 of 1984, which was brought on to the Statute with effect from 1st January, 1985 has inserted certain amendments to the Act of 1887. Section 26 of the Act of 1887 had been repealed by the Presidency Small Cause Courts Law Amendment Act of 1888. The Maharashtra Act 24 of 1984 provides that Section 27 of the original Act is to be renumbered as Section 25A after which Chapter IV-A has been inserted. Section 26 which is part of Chapter IV-A deals with suits or proceedings between a licensor and licensee or landlords and tenants for the recovery of possession of immovable property and license fees or rent. It stipulates that such suits would lie before the Court of Small Causes except when other Acts are applicable. Section 26 reads as follows:

26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.-

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of Sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent there for, irrespective of the value of the subject matter of such suits or proceedings.

(2). Nothing contained in Sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or

the Maharashtra Housing and Area Development Act, 1976 or any law for the time being in force, apply....

8. Section 26A provides for an Appeal against any decree or order passed by the Court of Small Causes. The Appeal lies to the District Court and there is a finality of proceedings once the Appeal is decided. Thus, the only remedy for a person who fails in an Appeal against the decree passed by the Small Causes Court would be to file a Writ Petition under Article 227 of the Constitution of India.

9. Section 26B saves suits involving title of a property and provides that such suits may be filed in a competent court by a party to establish his title over the property.

10. Section 26C provides as follows:

26C. Saving of pending proceedings.- Notwithstanding anything contained in Section 16, all suits and other proceedings cognizable by the Court of Small Causes under this Chapter and pending in the District Court or the Court of any Civil Judge on the date of coming into force of the Provincial Small Cause Courts and Presidency Small Cause Courts (Maharashtra Amendment) Act, 1984 shall be continued and disposed of by the District Court or the Court of the Civil Judge, as the case may be, as if this Chapter had not been enacted....

11. Thus, a bare perusal of Chapter IV-A of the Act of 1887, indicates that the Small Causes Court has exclusive jurisdiction to try suits for recovery of possession of the property between landlords and tenants, licensors and licensees etc. Admittedly, the present suit had been filed by the plaintiffs, i.e. the respondents herein, as landlords, for eviction of the appellants from the suit premises and for recovery of its possession in view of the notice of termination of the tenancy issued by it in 1985. Thus, both the courts below have erred in deciding the suit. The appellate court has, in my opinion, without any basis, observed that Section 26 of the Provincial Small Cause Courts Act, 1887, has been deleted. The appellate court has not considered the effect of insertion of Section 26 as contained in Chapter IV-A on account of Maharashtra Act 24 of 1984 which was brought on to the Statute on 1st January, 1985. Admittedly, the suit has been filed only after this amendment to the Act. Therefore, the suit is governed by the provisions of Section 26 of the said Act. As noted earlier Maharashtra Act 24 of 1984, as amended, gives exclusive jurisdiction to the Small Causes Court to decide suits or proceedings between the licensors and licensees or landlords and tenants for recovery of possession of the immovable property or for recovery of rent.

12. The Second Appeal is, therefore, allowed. The plaint shall be returned to the respondents for filing it before the appropriate court.