

(2011) 09 BOM CK 0183

In the Bombay High Court

Case No : First Appeal No. 1647 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

Vulcan Association and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 3
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28(1)
Constitution of India, 1950 — Article 133, 136
Maharashtra Rent Control Act, 1999 — Section 33, 33(1)
Presidency Small Cause Courts Act, 1882 — Section 19, 41, 41(1), 41(2)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15

Citation : (2012) 2 ALLMR 866 : (2012) 1 MhLj 687 : (2012) 2 RCR(Rent) 174

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : V.Y. Sanglikar, for the Appellant; Ganesh Ahuja A/w G.D. Talreja A/w Sahil Mullick instructed by G.D. Talreja and Associates, For respondent Nos. 1 to 10, for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—The submissions of the learned counsel appearing for the parties were heard on 26th July, 2011. Thereafter, further written submissions have been filed by the Advocate for the Respondents. On 14th August, 2008, this Court directed that the appeal shall be disposed of finally at the stage of admission. Accordingly, the appeal is taken up for final disposal at admission stage.

2. With a view of appreciate the submissions, it is necessary to make a brief reference to the facts of the case. The Respondent Nos. 1 to 10 are the original Plaintiffs and the Appellant is the Defendant No. 1. The suit was filed by the Plaintiffs for permanent injunction. The case made out by the Plaintiffs in the plaint is that the Plaintiff No. 1 is an association of tenants of the office premises situated at Vulcan Insurance Building, Churchgate, Mumbai 400 020 and the

Plaintiff Nos. 2 to 10 are the members of the Association. It is contended that the Plaintiffs are the tenants and the authorized occupants in respect of the office premises in the same building. In the plaint, it is pointed out that initially the building was owned by the M/s. Vulcan Insurance Company Limited and subsequently, the asset of the building vests in the Appellant. It is contended that the notices have been issued by the Appellant to some of the occupants rendering them as unauthorized occupants. It is contended that though the tenancy is purported to be terminated by the Appellant, the procedure under the Public Premises (Eviction and Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the said Act of 1971") has not been followed. It is contended that right from the inception of the respective tenancies, the Appellant and other tenants are parking their cars in the open space of the suit property as of right and as the tenants thereof. It is contended that the Plaintiffs have been paying monthly rent to the Appellant inclusive of the rent for car parking. The allegation in the plaint is that the Plaintiffs have right as tenants to park the cars in the compound of the building. It is alleged that the Appellant is trying to prevent the Plaintiffs from parking the respective cars in the compound of the building and therefore, a decree for perpetual injunction has been claimed restraining the Appellant from preventing or obstructing the Plaintiffs from parking their cars in the compound at respective places.

3. The suit was contested by filing a written statement. Various contentions have been raised including the contention regarding bar of jurisdiction. One of the contentions raised is that the suit was barred by section 15 of the said Act of 1971.

4. Apart from the issues on merits, the trial Court has framed issue as to jurisdiction of the City Civil Court to entertain and try the suit. The City Civil Court decreed the suit by granting perpetual injunction against the Defendant No. 1. The issue of jurisdiction was answered against the Defendant No. 1.

5. The submission of the learned counsel appearing for the Appellant / Defendant No. 1 is that the averments made in the plaint show that the Plaintiffs are claiming tenancy rights over the open spaces in the compound of the building for the purposes of parking of their respective cars. He placed reliance on section 41 of the Presidency Small Causes Court Act, 1882 (hereinafter referred to as "the Small Causes Court Act") as amended by the Maharashtra Act No. XIX of 1976. His submission is that the exclusive jurisdiction to entertain and try the suit vested in the Court of Small Causes in view of section 41 of the Small Causes Court Act. He relied upon a decision of the Apex Court in the case of Mansukhlal Dhanraj Jain and Others Vs. Eknath Vithal Ogale, . He also placed reliance on a decision of the Division Bench of this Court in the case of Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel, . He submitted that section 41 covers a suit filed by a person claiming to be a tenant against the landlord for injunction restraining the landlord from forcibly evicting the tenant from the premises subject-matter of tenancy. He submitted that phraseology used in the section 33 of the

Maharashtra Rent Control Act, 1999 and section 41 of the Small Causes Court Act is identical. His submission is that on plain reading of the averments made in the plaint, the Court of Small Causes has exclusive jurisdiction to entertain and try the suit.

6. The learned counsel appearing for the original Plaintiffs submitted that only contention in the written statement is that the suit was barred in view of section 15 of the said Act of 1971. His submission is that in the said Act of 1971, there is no remedy available to the tenants to seek injunction. The learned counsel relied upon a judgment of this Court in the case of Packing Paper Products Vs. Nicafe Private Ltd. and Another, and submitted that the suit for injunction filed by the tenants against the landlord must be filed in the Civil Court. Relying upon the provisions of the Bombay City Civil Court Act, 1948 and in particular, section 3 thereof, he submitted that the Ordinary Original Civil Jurisdiction is vested in the City Civil Court, which is much wider than the jurisdiction u/s 41 of the Small Causes Court Act. His submission is that in view of the decision of this Court in the case of Packing Paper Products (supra), only the Civil Court is having original jurisdiction to entertain the suit. The learned counsel submitted that in view of sub-section (2) of section 41 of the Small Causes Court Act, the jurisdiction of the Small Causes Court to entertain the suits for the recovery of the possession of any immovable property or for recovery of licence fee or charges or rent thereof to which provisions of the Bombay Government Premises (Eviction) Act, 1955 are applicable has been ousted. He submitted that as the parties are governed by the said Act of 1971, in view of sub-section (2) of section 41, the jurisdiction of the Court of Small Causes is barred. He relied upon the order passed in the Appeal from Order arising out of the said suit. He has made certain submissions on merits of the controversy. He placed reliance on a decision of the Apex Court in the case of Magiti Sasamal Vs. Pandab Bissoi, . He placed reliance on another decision of the Apex Court in the case of Saiyada Mossarrat Vs. Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) and Others, . The learned counsel also relied upon a decision of the Division Bench of this Court in the case of Ramesh Dwarkadas Mehra Vs. Indravati Dwarkadas Mehra, .

7. After the submissions were concluded on 22nd August, 2011, the learned counsel appearing for the original Plaintiffs submitted additional written submissions inviting attention of the Court to section 19 of the Small Causes Court Act. His submission is that the relevant provisions of section 19 have not been considered by the Apex Court in the case of Mansukhlal Dhanraj Jain and others (supra). His submission is that in view of clauses (g), (i) and (s) of section 19, the jurisdiction of the Court of Small Causes to entertain a suit for injunction has been expressly barred. The learned counsel appearing for the Appellant relied upon a decision of the Full Bench of this Court in the case of Prabhudas Damodar Kotecha and Another Vs. Smt. Manharbala Jeram Damodar and Others, .

8. I have given careful consideration to the submissions. I have perused the

pleadings and notes of evidence forming part of additional compilation filed by the Appellant. It is well settled that the issue of jurisdiction has to be determined on the basis of the averments made in the plaint and for the purposes of determining the issue of jurisdiction, the Court will have to proceed on the footing that the averments made in the plaint were true. As pointed out earlier, in the plaint, it is stated that the Plaintiff No. 1 is an Association of which the Plaintiff Nos. 2 to 10 are the members. It is alleged that the Plaintiff Nos. 2 to 10 are the tenants in respect of the office premises in the building admittedly owned by the Appellant. It will be necessary to make a reference to paragraph No. 12 of the plaint, which reads thus :

12) The Plaintiffs state that ever since the inceptions of their respective tenancies, the Plaintiffs and the other tenants have been parking their cars in the open space of the Suit property as of right and as the tenants thereof. The Plaintiffs have been paying monthly rent to the Defendant No. 1 inclusive of rent for car parking. The Plaintiffs state that there is sufficient space provided and allotted in the compound of Vulcan Insurance Building for parking of about 20 cars." (Emphasis added)

In paragraph No. 13, the Plaintiffs have stated thus :

13).....Thus, the Defendant No. 1 has in terms accepted the tenancy of the Plaintiffs in respect of the car parking by including the amount for car parking in the basic rent charged to the Plaintiffs and its members.

(Emphasis added)

In paragraph No. 15, the Plaintiffs have stated thus :

15) The Plaintiffs state that the Plaintiffs have thus right since inception and till today continued parking their cars as tenants in the compound of Vulcan Insurance Building and for which the Defendant No. 1 Company has been charging rent also by including the same in the rent receipt.

9. In paragraph No. 16, the Plaintiffs have reiterated the existence of their tenancy rights in respect of parking spaces in the compound of the building. Thus, the averments made in the plaint show that the Plaintiffs are claiming tenancy rights in respect of the car parking spaces in the compound of the building owned by the Appellant. The specific case is that the Defendants No. 1 (Appellant) is charging rent for the parking spaces. Thus, the foundation of the prayer for injunction is that the Plaintiffs are the tenants of the various open parking spaces in the building owned by the Appellant and therefore, the perpetual injunction is claimed restraining the Appellant from interfering with the rights of the Plaintiffs of parking the cars. It is pertinent to note that though in paragraph No. 1, it is stated that the Plaintiff Nos. 2 to 10 are the tenants in respect of the office premises of the building, in paragraph Nos. 12 and 15, it is claimed that all the Plaintiffs are tenants in respect of the open parking spaces. The fact that all the Plaintiffs are tenants is reiterated in paragraph Nos. 13 and

15 of the plaint. Thus, the Plaintiffs are claiming to be the tenants in respect of the open spaces.

10. In the light of the aforesaid factual matrix, now the issue of jurisdiction will have to be considered. It is true that in paragraph No. 1 of the written statement, the Appellant - Defendant No. 1 has pleaded bar of section 15 of the said Act of 1971. On plain reading of the provisions of the said Act of 1971, the said bar will not be attracted. There is no remedy available to the tenants under the said Act of 1971 to seek injunction. Thus, the bar u/s 15 of the said Act of 1971 will not be attracted. However, this is not the only defence. In paragraph No. 7 of the written statement, it is contended that if the Plaintiffs want to claim tenancy rights, the Plaintiffs must approach the Rent Act Court.

11. It will be necessary to make a reference to the provisions of the Small Causes Court Act as well as the said Act of 1999. Section 33 of the said Act of 1999 reads thus :

33. Jurisdiction of courts,- (1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdictions, -

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887 (IX of 1887), such Court, and

(c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); and subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained in clause (b) of subsection (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 (IX of 1887), and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under Clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed

from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes."

Section 41 of the Small Causes Court Act, as amended by the Maharashtra Act No. XIX of 1976 reads thus:

41 (1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Mumbai, or relating to the recovery of the licence fee or charges or rent therefor, 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 Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply.

12. In both the section 33 of the said Act of 1999 as well as section 41(1) of the Small Causes Court Act, the exclusive jurisdiction is conferred on certain Courts (in Mumbai on the Court of Small Causes) to entertain and try any suit or proceedings between the landlord and the tenant relating to recovery of the possession of immovable property. Therefore, the jurisdiction of the Civil Court is barred by necessary implication. Before going to the applicability of section 41(1) of the Small Causes Court Act, it will be necessary to consider the interpretation put by the Courts to the phraseology "relating to recovery of possession" used in both the sections.

13. The words "relating to recovery of possession" used in section 41(1) of the Small Causes Court Act came up for consideration before the Apex Court in the case of Mansukhlal Dhanraj Jain and others (supra). In paragraph No. 1 of the judgment, the Apex Court has reproduced the question, which arose for its consideration. Paragraph No. 1 reads thus :

In both the civil appeals the first one arising pursuant to the certificate of fitness granted under Article 133 of the Constitution by the High Court of Bombay and the other one arising out of special leave to appeal granted by this Court under Article 136 of the Constitution of India against another decision of the same High Court, a short question arises for our consideration. It is as under :

Whether the suit filed by the plaintiff claiming the right to possess the suit

premises as licensee, against defendant alleged licensor, who is said to be threatening to disturb the possession of the plaintiff licensee, without following due procedure of law, is cognizable by the court of small causes Bombay as per section 41(1) of the Presidency Small Causes Courts Act (hereinafter referred to as "the Small Causes Courts Act"), 1982 or whether it is cognizable by the City Civil Court, Bombay constituted under the Bombay City Civil Act.

14. Thus, the issue which arose before the Apex Court was as regards the maintainability of the suit filed by the alleged licensee against the alleged licensor, who was threatening to disturb the possession of the Plaintiff - licensee without following due process of law. It will be necessary to make a reference to what is held by the Apex Court in paragraph No. 13 of the said decision. In paragraph No. 13, the Apex Court observed thus:

13..... However, on the clear language of the section in our view it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that section 41(1) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by section 41(1).

(Emphasis added)

15. Thus, what has been held by the Apex Court is that the suit for protecting the possession over the immovable property filed either by a tenant or licensee against his landlord or licensor, as the case may be, is clearly covered by the wide sweep of the words "relating to recovery of possession" as employed by section 41(1) of the Small Causes Court Act. It will be necessary to make a reference to a decision of the Division Bench of this Court in the case of Nagin Mansukhlal Dagli (supra). The Division Bench held that the words "relating to recovery of possession" are wide enough to cover suits for the relief of injunction. Thus, the interpretation of the words "relating to recovery of rent of immovable property" used in both sub-section (1) of section 33 of the said Act of 1999 and sub-section (1) of section 41 of the Small Causes Court Act will be governed by the decision of the Apex Court in the case of Mansukhlal Dhanraj Jain and others (supra).

16. The learned counsel appearing for the Respondents/Plaintiffs has relied upon a decision of this Court in the case of Packing Paper Products (supra). This Court considered similar phraseology used in sub-section (1) and section 28 of the

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, which is *pari materia* with sub-section (1) of section 33 of the said Act of 1999. In paragraph No. 15, this Court held thus:

15. The suit filed by the Respondent is a suit for injunction simplicitor. The suit is neither for recovery of rent, nor for recovery of possession of any premises nor relating to the recovery of rent, nor relating to the recovery of possession of the premises. It is not shown under which provision of the Rent Act the issues in the suit could have been determined as an application or claim made under the Rent Act or under which provision of the Rent Act any question arising for determination in the Respondent's suit for injunctions simplicitor could be tried.

(Emphasis added)

17. Perusal of the decision of this Court shows that the same has been rendered in ignorance of the binding precedent of the decision of the Apex Court in the case of Mansukhlal Dhanraj Jain and others (*supra*) and the decision of the Division Bench in the case of Nagin Mansukhlal Dagli (*supra*). Therefore, the decision of this Court in the case of Packing Paper Products (*supra*) cannot be read as a binding precedent. Another submission was made by the learned counsel appearing for the Respondents by relying upon section 19 of the Small Causes Court Act. Reliance was placed on section 19 for contending that the Court of Small Causes has no jurisdiction to entertain and try a suit for injunction. On this aspect, it must be also noted here that the sub-section (1) of section 41 of the Small Causes Court Act starts with a non obstante clause, which gives overriding effect to the said provision over the other provisions of the Small Causes Court Act. Therefore, the argument based on section 19 of the Small Causes Court Act is not available to the Plaintiffs.

18. Reliance was placed by the learned counsel appearing for the Plaintiffs on sub-section (2) of section 41 of the Small Causes Court Act. Sub-section (2) excludes the applicability of sub-section (1) to the case where the provisions of the Bombay Government Premises (Eviction) Act, 1955 are applicable to the premises. It is not the case of the Plaintiffs that the provisions of the said Act of 1955 are applicable to the suit premises. Sub-section (2) does not make a reference to the provisions of the said Act of 1971.

19. Even assuming that sub-section (2) of section 41 is applicable, as the Plaintiffs have claimed composite tenancy in respect of the office premises and the parking space, sub-section (1) of section 33 of the said Act of 1999 will apply.

20. In the circumstances, the jurisdiction of the City Civil Court to entertain the suit for injunction filed by the Plaintiffs was barred and the exclusive jurisdiction vested in the Court of Small Causes.

21. Hence, only on this ground, the impugned decree deserves to be quashed and set aside and the order of return of the plaint will have to be passed. To enable the original Plaintiffs to take back the plaint and to file it in appropriate

Court, a limited protection deserves to be granted to the Plaintiffs. Hence, I pass the following order :

- i. The impugned judgment and decree dated 7th April, 2008 is quashed and set aside;
- ii. As the City Civil Court had no jurisdiction to entertain the suit, the said Court is directed to return the plaint to the Plaintiffs for presentation before the appropriate Court;
- iii. To enable the original Plaintiffs to take appropriate steps, for a period of four months from today, there will be interim relief in terms of clause (2) of the operative part of the impugned judgment and decree;
- iv. The appeal is allowed on above terms with no order as to costs; and
- v. All the contentions of the parties on merits are kept open.