

(1960) 06 BOM CK 0010

In the Bombay High Court

Case No : Civil Revision Application No. 941 of 1958

Vishwanath Vishnupant Pagnis

APPELLANT

Vs

Prabhakar Raghunath Karekar

RESPONDENT

Date of Decision : 17-06-1960

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 12, 16, 17, 7, 8

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 29

Citation : (1960) 62 BOMLR 950

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naik, J.—This is an application in revision u/s 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act (hereinafter referred to as the Act) from the order of the Assistant Judge, Kolhapur. The opponents made an application in the Court of the Civil Judge, Junior Division, Kolhapur, u/s 11 of the Act for fixing standard rent for the suit premises. The " trial Court fixed the standard rent at Rs. 100 p.m. exclusive of any permitted increases. From that decision, the opponents went in revision to the District Court and the latter transferred the revision for hearing to the Assistant Judge, who eventually decided the matter by fixing standard rent at Rs. 70 p.m. exclusive of electricity charges. It is against that order that the petitioner has come up in revision.

2. Mr. Walawalkar, for the petitioner, has raised a preliminary objection contending that the Assistant Judge had no jurisdiction to decide the revision application u/s 29 of the Act. The objection must prevail for the following reasons: Section 29(5) of the Act, which confers revisional powers upon the District Court, runs as follows:

Where no appeal lies under this section from a decree or order in any suit or proceeding...the District Court may, for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such

decree or order was made and pass such order with respect thereto as it thinks fit.

The first point to be noted is that the Rent Control Act is a special Act and the powers of appeal and revision flow from the provisions of that Act and not from the provisions of the Code of Civil Procedure. Sub-section (3) relates to revision applications. The District Court has no revisional jurisdiction under the CPC or under the Bombay Civil Courts Act. The only instance, in which revisional jurisdiction was given to the District Court, was a provision contained in the Deccan Agriculturists Relief Act so far as four districts were concerned.

3. Mr. Paranjape, for the opponents, pointed out that the words used in Sub-section (3) of Section 29 of the Act are "District Court" and not "District Judge". He argued that if the words "District Judge", had been used in that Sub-section, then it could be said that the powers were conferred on the District Judge as *persona designata*. He also contended that the Assistant Judge is a component part of the District Court and, therefore, u/s 29(J) of the Act, the Assistant Judge can exercise all the powers, which are exercisable by the District Judge. In order to appreciate this argument, it is necessary to refer to some of the provisions of the Bombay Civil Courts Act.

4. Section 7 of the Bombay Civil Courts Act, 1869 (hereinafter referred to as the Act of 1869) provides:

The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure.

Section 8 provides that the District Court shall be the Court of appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. These provisions are contained in Part III of the Act of 1869. Part IV relates to Joint Judges and Section 12 says that the State Government may appoint in any District a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge. Part V relates to Assistant Judges and Sections 16 and 17 are material for our present purpose. Section 16 lays down:

The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value, applications or references under special Acts and miscellaneous applications.

Before 1958 the words "not being of the nature of appeals" appeared at the end of the above section. These words were omitted by the Amending Act No. XCIV of 1958. The deletion of these words, in my opinion, does not make any substantial difference in the interpretation of Section 16. Section 16 relates to the original jurisdiction of the Assistant Judge and Section 17 to his appellate jurisdiction. The first part of Section 16 in terms relates to original suits. In view of these two considerations, the words "" applications or references under special

Acts and miscellaneous applications" contained in Section 16 will have to be interpreted as applications or references under special Acts and miscellaneous applications of an original character. It will at once be seen that the original jurisdiction of the Assistant Judge is not co-extensive with the jurisdiction of the District Judge, which is unlimited. The pecuniary limit of the original jurisdiction of the Assistant Judge in all matters is restricted to fifteen thousand rupees. The last clause of Section 16 provides:

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds ten thousand rupees.

In other words, when the Assistant Judge decides a case referred to him by the District Judge, the value of which is less than ten thousand rupees, the appeal from that decree will lie to the District Judge and if the value exceeds ten thousand rupees, the appeal will lie to the High Court. Section 17 of the Act of 1869 runs thus:

An Assistant Judge shall have jurisdiction to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge and as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge.

Now, under the first clause of Section 17, the important condition to be fulfilled, before the Assistant Judge gets jurisdiction to try an appeal, is that the appeal should have been referred to him by the District Judge. The second clause of Section 17 specifically provides that the decrees and orders passed by the Assistant Judge shall have the same force and shall be subject to the same rules as regards the procedure and appeals as decrees and orders passed by the District Judge. If Mr. Paranjape's argument viz., that the Assistant Judge is a component part of the District Court, is correct, then it is clear that there was no need of making the kind of provision as is made in the second clause of Section 17 of the Act of 1869 so far as appeals are concerned. The very fact that the Legislature thought it fit to make a specific provision, as to the force of the decrees and orders passed by the Assistant Judge in his appellate jurisdiction, clearly shows that it wanted to treat the Assistant Judge on a separate footing.

5. As pointed out above, the Act of 1869 does not and could not empower the District Judge to refer revisional matters to the Assistant Judge for the simple reason that the Act of 1869 itself has not clothed the District Court with any revisional jurisdiction. Therefore, if the Legislature wanted to provide for the contingency of the revision applications being heard by the Assistant Judge, they should have made a specific provision in the Rent Control Act to the effect that the District Judge may refer revision applications filed before him u/s 29(3) of

the Act to the Assistant Judge and the latter will have the power to decide the applications in the same way as the District Judge. There is no such provision in Section 29(5) of the Act indicating that the Legislature wanted to confer jurisdiction on the Assistant Judge to hear revision applications. So far as the appeals under the Act are concerned, these appeals could obviously be transferred to the Assistant Judge by the District Judge u/s 17 of the Act of 1869.

6. The result is that the application succeeds and the rule is made absolute. The order of the Assistant Judge is set aside. The application is sent back to the District Court for deciding the same by the District Judge himself according to law. Parties to bear their respective costs of this application.