
(2025) 12 BOM CK 1702
In the Bombay High Court
Case No : Appeal From Order No.499 Of 2024

Zenobia R. Poonawala

APPELLANT

Vs

Rustom Farhad Ginwalla

RESPONDENT

Date of Decision : 23-12-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 10, Order 7 Rule 11

Citation : (2025) 12 BOM CK 1702

Hon'ble Judges : Kamal Khata, J

Bench : Single Bench

Advocate : Akash Rebello, Premlal Krishnan, Nadeem Shama, Sidharth Seshadri, Prashant Bothre, Virag Tulzapurkar, Sameer Pandit, Sarrah Khambati, Aastik Agarwal, Wadia Ghandy & Co

Final Decision : Rejected

Judgement

Kamal Khata, J

1. By this Appeal the Defendants (Appellants herein) challenge the order Dated 29th May 2024 which partly allowed the Plaintiffs (Respondents herein) Notice of Motion 22 of 2022 filed in Short Cause Suit 2905 of 2022.

Background and Context

2. The Plaintiffs filed the aforementioned suit for enforcing their civil rights and possessory rights. In furtherance thereof a notice of motion No 22 of 2022 seeking a temporary injunction to restrain the Defendants and persons claiming through them from in any manner interfering with the use of the lift in the suit building. They also sought to restrain the Defendants from installing CCTV cameras in and around the premises of the suit building and from obstructing access to the common terrace and other common areas.

3. As fate would have it, this litigation is yet another in a long series of disputes between siblings. Defendant No. 1 and Plaintiff No. 1 & 11 are brother and

sisters, while another sister - not arrayed as a party herein - is presumably excluded as she is not an occupant of the suit building.

4. The Defendant No.1 and Plaintiff No.1 have been engaged in multiple proceedings before this court and other fora. The disputes have escalated to such an extent that a contempt notice has been issued against the Defendant (Appellant No.1), which is pending adjudication.

5. The Plaintiffs have come with a case that they are occupants of the Rutton Manor, Garden Road, Apollo Reclamation, Colaba, Mumbai - 400 039 ('suit building'). The Defendants are also the occupants of the suit building. Certain disputes between some of the Plaintiffs and Defendants regarding leasehold rights over the land on which the suit building stands are pending before another forum. In the present suit, however, the Plaintiff seek enforcement of their civil rights as occupants of the suit building.

6. It is the Plaintiff's case that the suit building comprises of Ground plus four floors, where the Plaintiffs reside with their respective family members. The Defendants reside on the Fourth floor. The Plaintiffs allege that due to the Defendants' illegal acts, wrongful conduct, and nuisance, as well as obstruction caused by them, the Plaintiffs were constrained to file the present suit.

7. The Plaintiffs further allege that most residents in the building are of advanced age and suffer from one ailment or the other, making it difficult to climb stairs to reach to their respective flats. Despite the Plaintiffs offer for financial contribution for repair and maintenance of the lifts the Defendants have obstructed its use by locking it at the fourth floor.

8. It is further alleged that the Defendants have illegally prevented the Plaintiffs from accessing the common terrace, water tanks and meter room, and from engaging services to clean sewage. Additionally, the Defendants are alleged to have threatened the Plaintiff with false criminal proceedings.

Submissions on behalf of the Defendants (Appellant)

9. Learned counsel for the Defendants Mr. Rebello submits that the Plaintiff No.1 is a tenant of the Defendant No.1, therefore the present suit is not maintainable. It is submitted that Plaintiffs have suppressed this material fact. Mr. Rebello submits that the Defendant No.1 is the sole joint tenant in respect leasehold rights of the land over which the suit building stands. The rights were derived by the Defendant No.1 under the Will of their mother, who was the original lessee of the land.

10. It is further submitted by Mr. Rebello that MbPT, the owner of the land, has unequivocally recognized Defendant No.1 as the sole landlady. Accordingly, the Plaintiffs are tenants under the Defendant No.1, and several eviction suits filed against them are presently pending before the Small Causes Court, Mumbai.

11. Mr. Rebello submits that Plaintiff No.1 has also filed an application to deposit

rent in the eviction suit no. 70 of 2015 thereby admitting the relationship of tenancy.

12. Another contention of Mr. Rebello is that the suit is barred by virtue of Section 10 of Code of Civil Procedure (C.P.C.) as proceedings are pending between the same parties before the Small Causes Court, Mumbai.

13. Mr. Rebello further submits that the suit is bad for misjoinder of parties, as one of the Plaintiff is a domestic help (maid servant) who has no locus standi to file the present suit.

14. Mr. Rebello next contends that the present suit seeks reliefs identical to those claimed by the Defendants in their own proceedings, and therefore not maintainable.

15. His penultimate submission is that in Civil Revision Application filed by the Appellants herein challenging the dismissal of their Notice of Motion seeking rejection of plaint, this Court has prima facie observed that the dispute is that of landlord and tenant.

16. Lastly, Mr. Rebello relies on the judgment of the Hon'ble Supreme Court in *Banatwala & Company v. LIC & Ors.* (2011) 13 SCC 446 to submit that an application by a tenant for restoration of essential supplies and services is maintainable under Rent Control Act, and such disputes must be adjudicated within statutory framework established thereunder.

Submissions on Behalf of Plaintiff Nos.1 & 2 (Respondent Nos.1 & 2)

17. Learned Senior Counsel Mr. Tulzapurkar, submits that the Plaintiffs occupy various flats in the suit building. Late Mrs. Pervin Ginwalla, the mother of Defendant No. 1 and Plaintiff No.1 & 11) held 100% interest in suit building. Upon her demise in 1995, and according to her Will, Pervin's interest devolved on her husband Farhad Ginwalla and Defendant No.1, in the proportion of 55% and 45% respectively. Farhad (husband of Pervin) by way of Gift Deed dated 11th October 2017, transferred his interest in the suit building in favour of Plaintiff No.1 and Rashma (sister/daughter not a party to present lis). Plaintiff No.1 therefore is a co-owner of the Suit building, and the submission that he is a tenant is wholly misconceived.

18. Learned Senior Counsel Mr. Tulzapurkar submits that Defendants have been continuously harassing the Plaintiffs and creating obstacles in their day-to-day living, rendering their residence in the suit building hazardous and oppressive, with living conditions having substantially deteriorated.

19. Mr. Tulzapurkar further submits that Defendants admit that Plaintiff Nos. 1 & 2 reside in the suit building. The primary objection of the Defendants relates to alleged non-payment of maintenance charges, which the impugned order records as having been expressly agreed to be borne by the Plaintiffs herein. It is also noted that the same statement was reiterated during arguments as before this

Court.

20. Learned Senior Counsel submits, and rightly so, that the present suit is maintainable before the City Civil Court as it seeks enforcement of civil rights. Plaintiff No.1 & 2 claim to be owners and not tenants. In any event, the suit does neither seek recovery of possession nor recovery of rents or fees but seeks simplicitor injunction reliefs.

21. Mr. Tulzapurkar further submits that Plaintiff Nos.1 & 2 had filed a Suit No. 790 of 2018 against Appellants seeking injunction in respect of acts of harassment then complained of, which, although similar in nature, arose from a distinct cause of action. This court, by detailed order dated 2nd May 2018, granted interim reliefs in favour of Plaintiff Nos.1 & 2 and recorded their assertions of co-ownership in respect of the suit building. The said order was challenged by the Defendants, and this Court, while sitting in appeal, declined to interfere, despite similar contentions regarding tenancy having been raised.

22. It is further submitted that the issue of jurisdiction forms the subject matter of a separate proceedings, namely the Civil Revision Application filed by the Appellants, and cannot be reagitated in the present appeal.

23. Mr. Tulzapurkar submits that invocation of Section 10 of C.P.C. is misconceived, as the proceedings are not between the same parties, and the issues involved and subject matter are entirely distinct.

24. Mr. Tulzapurkar further submits that the Defendants reliance on the application filed by Plaintiff No.1 to deposit rent before the Small Causes Court is highly misleading. The application was filed prior to the Plaintiff No.1 acquiring ownership rights under the Gift deed dated 17th October 2017 and was filed without prejudice to his rights and contents, as expressly recorded in the order of the Small Causes Court dated 18th November 2022. It is reiterated that Plaintiff No.1 consistently asserts his status as the co-owner of the suit building.

25. Mr. Tulzapurkar submits that the judgment relied upon by the Defendants pertains to the conflict between the Rent Control Act and Public Premises Act in the context of fixation of standard rent and has no application whatsoever to the facts and circumstances of the present case.

26. Mr. Tulzapurkar submits that Defendants reliance on orders passed in Writ Petition 479 of 2019 is selective and misleading. The said Writ was filed by Plaintiff No. 1 impugning an order passed by the Bombay Port Trust Authority, wherein this Court has directed status quo in respect of the suit property. Subsequent orders passed in the Writ Petition, which were adverse to the Defendants have been deliberately suppressed, including orders whereby this Court issued a contempt notice and refused to hear the Defendant No.1 on merits until the contempt notice was purged.

27. Lastly Mr. Tulzapurkar, relying upon the judgment of *Wander Ltd. v. Antox India 1990 Supp SCC 727* submits that an appellate court ought not to

interfere with the exercise of discretion by the court of first instance, nor substitute its own discretion, except where such discretion is shown to have been exercised arbitrarily, capriciously, perversely, or in disregard of settled principles governing grant or refusal of interlocutory reliefs.

Reasons and Conclusions

28. It is indeed unfortunate to see siblings embroiled in protracted litigation. However, in an adversarial system, the Court is required to adjudicate the disputes placed before it. Upon consideration of the rival submissions, I find considerable merit in submissions advanced by the learned Senior Counsel Mr. Tulzapurkar.

As to Jurisdiction

29. It is trite law that suits between landlord and tenant relating to recovery of possession of tenanted premises and recovery of rent or license fees fall within the exclusive jurisdiction of the Small Causes Court, as held by this Court in *ING Vysya Bank Ltd v. Modern India Ltd.* 2008 (2) Bom CR 255; 2008 SCC Online Bom 103. However, a plain reading of the prayers sought by the Plaintiffs shows that the reliefs pertain to the enforcement of their civil rights, which can only be granted by a competent civil court, being the City Civil Court at Bombay in the present case.

30. Even assuming, *arguendo*, that the Plaintiffs are tenants, the suit as framed – seeking injunctive reliefs simpliciter – would nonetheless be maintainable before the City Civil Court or the Competent Civil Court.

31. The submissions advanced by Mr. Rebello, in my view, has missed the wood for the trees. The objections raised to the suit as framed are misconceived. Several other submissions advanced by him are in substance, unrelated to the present *lis*. The previous rounds of litigation and any other proceedings are of no concern to the present appeal from order.

32. The Impugned order, which is based upon the admission of the Defendants, specifically records that Plaintiff No. 1 & 2 reside in the suit building. The real grievance of the Defendants pertains to payment of maintenance charges, an issue which stands adequately addressed by the statement made by learned Senior Counsel Mr. Tulzapurkar on behalf of the Plaintiffs.

As to Tenancy of Plaintiff No. 1

33. It is the case of the Plaintiff No. 1 that he is a co-owner by virtue Gift deed dated 17th October 2017 executed by Farhad the husband of Pervin Ginwala, the original lessee. However, it is seen that the Defendant No.1 herself, along with Farhad, has claimed leasehold rights through and under the Will of Pervin which claim is still pending adjudication.

34. In my view, considering that the rights of Plaintiff No.1 and Defendant No.1, either or both, being a lessee to the suit building pending adjudication by a

jurisdictional Court, cannot be an impediment for a decision in the present proceeding as filed. Consequently, the contention of Mr. Rebello regarding mis-joinder of parties and the alleged bar under Section 10 Code of Civil Procedure are devoid of merit, and the judgment relied upon by him is wholly inapplicable to the facts of the present case.

35. Another submission of Mr. Rebello that only the Plaintiff No. 1 & 2 are before this Court cannot curtail the jurisdiction of this Court to adjudicate the present appeal.

36. As far as the Appellants' challenge to the dismissal of their application under Order VII Rule 11 of the Code of Civil Procedure is concerned, the same arises from independent proceedings. Any orders passed therein, or observations made—whether prima facie or otherwise—do not advance the Appellants' case in the present appeal.

37. I also find merit in Mr. Tulzapurkar's submissions that present suit, even if it seeks reliefs similar to those sought earlier, is nevertheless maintainable, as the cause of action is distinct. Orders passed in earlier suit at the instance of Plaintiff No. 1 & 2, and their confirmation by this Court in Appeal, do not preclude the Plaintiffs from prosecuting the present proceedings.

38. The reliance placed by the Defendants on Writ Petition No. 479 of 2019 and the orders passed therein, as well as the subsequent orders brought to my notice by the Plaintiffs, only demonstrate that there is no order restraining the Plaintiffs from prosecuting proceedings relating to the suit building.

39. Lastly, as rightly submitted by Mr. Tulzapurkar, the impugned order does not suffer from any perversity, nor is it that the view taken was not a plausible view. The view taken by the Trial Court is a plausible view consonant with the facts and circumstances of the case, and does not warrant interference by this Court.

40. In view thereof, the Appeal from Order fails and is accordingly dismissed. There shall be no order as to costs.

41. In view of the dismissal of the Appeal, Interim Applications does not survive and accordingly same are also disposed of.

42. At this stage, learned Advocate for the Appellant requested for stay. In view of the aforestated reasons, the request for stay is rejected.