

Order Below Ex. 9**(Passed on 24.11.2017)**

The present application is filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter ' the C.P.C.').

2. The defendant submitted that the plaintiffs have deliberately under valued the present suit in order to brought the suit within the jurisdiction of the court. The plaintiffs have nowhere mentioned the provision of the Bombay Court Fees Act, (in short Court Fees Act) in the plaint. In fact under section 6 (xii), list of the suits between the landlord and tenant is given. And if the suit is between the landlord and tenant, the court fee can be valued according to the amount of rent of immovable property payable in the year next before the date of presenting the plaint. It is provided that if the relief is sought includes the relief of possession, amount of fee shall be full ad valorem fee that is according to the market valuation of the property. The plaintiffs have not properly valued the present suit.

3. The defendant further submitted that if the valuation is done in accordance with market valuation of the property then its valuation will be more than pecuniary jurisdiction of the court. The plaintiffs have not valued the present suit as per the market valuation of the suit property. The suit property situated in the main area of the city. The market valuation of the suit property is

Rs. 20,000/- per square foot. The approximate market valuation of the suit property is 55,00,000/- (Fifty Five lacs). He submitted that for determination of the valuation of the suit property the court has to conduct the inquiry.

4. The defendant has further submitted that the plaintiffs have filed the present suit under the provision of Maharashtra Rent Control Act (hereinafter 'Rent Control Act'). Sec 33 of the Rent Control Act provides the jurisdiction of the court. The defendant submitted that the plaintiffs have nowhere branded him as a tenant. The plaintiffs have mentioned the relationship of licensee and licensor in the pleadings. The Rent Control Act does not deal with the dispute between the licensee and licensor.

5. As per the defendant, Sec 26 of Provincial Small Causes Court Act (hereinafter Small Causes Court Act) provides the suit in respect of licenses to be filed in the Small Causes Court. Admittedly, the Small Causes Court are not established in Shegaon. However, as per the Sec 28 of Bombay Civil Courts Act, Hon'ble Bombay High Court has empowered to invest the powers to the Civil Judge Jr. Dn. However, those powers can be exercised only in respect of such suits which are having the valuation less than Rs. 6000/-. As per the defendant this court is invested with the jurisdiction of Court of Small Causes and under Sec 28 (1) of the Small Causes Court Act, it is provided that the civil court shall have jurisdiction to entertain, try and decide the suit as contemplated under Sec 26 (1) of the Small Causes Court

Act. As per the defendant, this court cannot exercise the jurisdiction over the subject matter exceeding Rs.6000/-.

6. The defendant submitted that the plaintiffs have not mentioned him as a tenant in the pleading. Thus, the provisions of Rent Control Act are not attracted. Moreover, the plaintiffs have not complied with the mandatory requirement of the provision of Sec 106 of Transfer of Property Act. Further, the plaintiffs have mentioned in the suit that the Hon'ble High Court has allowed in the writ petition dtd. 23/12/ 2015 to initiate legal proceedings for eviction of the defendant. But Hon'ble High court has not mentioned to file the proceedings under provision of Rent Control Act. Thus, the defendant submitted that this court has no pecuniary jurisdiction to try the suit. Thus, he submitted for rejection of the plaint.

7. The plaintiffs have resisted the application by filing the say at Ex. 11. The plaintiffs have denied all contentions of the defendant. The plaintiffs have submitted that the defendant has filed suit in the court of Civil Judge Sr. Dn at Khamgaon bearing No. Spl. RCS No. 29/12. In that suit the defendant claims to be as a tenant. He has claimed the protection in the capacity of the tenant under the provisions of Rent Control Act. The plaintiffs submitted that being the law abiding religious charitable trust they have filed an application under sec 24 of the Rent Control Act before the competent authority i.e Sub Divisional Officer, Khamgaon against the defendant for eviction as the defendant was given the premises on registered agreement

of leave and licence. The said application was rejected by the competent authority. The defendant had filed Writ Petition no. 2768/15 before Hon'ble High Court (Nagpur Bench). The Hon'ble High court by its judgment dated 23.12.2015 observed that the competent authority has no jurisdiction to entertain the application under sec 24 of the Rent Control Act. Hon'ble Bombay High Court (Nagpur Bench) while passing the order to the plaintiffs has given the liberty to initiate the proceedings for eviction of the defendant in accordance with law.

8. The plaintiffs have specifically pleaded in para no. 21, 24 and 28 of the plaint that they are seeking the decree of eviction under sec 16 of the Rent Control Act. As the provision of Sec 24 is not applicable to the defendant for eviction, then the only mode available to evict the defendant is provided in sec 16 of the Rent Control Act. Thus, the plaintiffs have filed the suit being landlord by treating the defendant as a tenant / licensee. Moreover, the defendant claims himself to be a tenant in the proceeding of RCS 103/12 which is pending before this court. Thus, the defendant is estopped from claiming himself to be a licensee. The plaintiff has perfectly valued the present suit under sec 6 (xii) of Court Fees Act.

9. The plaintiffs have denied that the inquiry was necessary for ascertaining the valuation of the suit property. As the valuation in the office of Sub Registrar is meant for ascertaining the stamp duty and registration fee in case of alienation of the properties. The plaintiffs have properly valued

the suit by taking into consideration of the provisions of the Court Fees Act.

10. The plaintiffs have denied the necessity of issuance of notice under sec 106 of Transfer of Property Act. In this regard they submitted that for filing of the proceeding against licensee/tenant there is no necessity of issuance of notice under sec 106 of Transfer of property Act. The issue has decided by Hon'ble Supreme Court in case of *Dhanpal Chettiair v/s Yasodai Ammal AIR 1979 SC 1745*. Thus, the plaintiffs have strongly denied this contention of the defendant. Moreover, the plaintiffs have submitted that defendant has not filed the written statement within the period of 30 days. Thus, the plaintiffs have prayed to reject this application.

11. Heard Shri. B. K Gandhi for the defendant and Shri. Arun Patil for the plaintiffs. Both Advocates have filed puris at Ex. 30 in the proceeding of the case RCS No.15/2016 for treating the written notes of argument, reply, re-joinder, sur-joinder as the same in the present case.

12. During the course of argument, Advocate for defendant relied on *Radhashyam Zumbarilal Chandak v/s District Judge Amravati and another 2011 (1) All MR 6*, *Varden T. James v/s Farhang Azhar 2005 (2) All MR 1*, *Bhauram v/s Janaksingh and others 2012 (6) MH L J 758*. *Per contra* Advocate for the plaintiffs relied on *Masjid Alfuddin Ahle Hadis Trust v/s Jamil Ahamad Abdul Jalil 2009 CJ (Bom) 902*, *Qudrat Ullah v/s*

Municipal Board, Bareilly 1973 CJ (SC) 266, Associated Hotels of India Limited v/s R. N. Kapoor 1959 CJ (SC) 12. Sukhlal Bhivsan Dhobi (Suryawanshi) (deceased) thorough Lrs v/s Vinayak Sadashiv Sangale and anothers 2014 (3) Mh. L. J. Devidas Mohanlal Gupta v/s Ajesh Suresh Sarvaiyya 2007(1) Mh. L.

13. Before moving towards merits of application it is pertinent to note that for deciding the application under Order 7 Rule 11 of CPC the court has to look only the averments in the plaint. The plea of the defendant would be irrelevant. In that extent a reference has taken by the plaintiffs in written notes of argument at Ex.22 of the case of **M/s Candolim Developers Pvt. Ltd. V/s Mr. Pravin Grover and Others 2017(2) All MR 117** wherein Division bench of Hon'ble High Court has observed in para no. 12 that the jurisdiction of civil court is not barred by taking into account the reliefs taken by the appellant. It has observed that the question whether the suit itself is maintainable will have to be considered looking into the defence of respondents which exercise cannot be carried out while considering an application under Order 7 Rule 11 of CPC. Thus, while deciding the present application the pleadings of the plaintiff are only to be considered.

14. The first contention of the defendant is that the plaintiffs are not entitled to file the suit under the provision of Rent Control Act. The provision of Rent Control Act deals with the dispute between the landlord and tenant. As per the defendant the plaintiffs have not mentioned in the plaint that the defendant is tenant. The suit is based upon the agreement of

leave and licence between the plaintiffs and defendant. As per the contention of the defendant that the plaintiffs have to prove firstly the relationship of landlord and tenant. But as per the plaintiffs the defendant claims to be a tenant in the proceeding in Spl. Civil Suit no. 29/12 and in RCS No. 103/12. For deciding this application the averments in the plaint needs to be considered.

15. No doubt issue relationship of landlord and tenant and licensee and licensor will decided at the time of hearing. Now at this initial stage the court has to look only to the averments in the plaint. The plaintiffs have valued the present suit on the basis of the amount of rent or license fee of the each year. The plaintiffs have valued the present suit which has mentioned in para no. 36 and 38 of the plaint. The plaintiffs have valued the present suit for Rs. 67,084/- and accordingly paid the court fee of Rs. 5530/. The plaintiffs have paid the court fee as per the provisions of Court Fees Act. Thus, I found no substance in the contention of the defendant.

16. The next contention of the defendant is that this court has no pecuniary jurisdiction to try this suit. As per the defendant the market valuation of the suit property come to Rs.55,00,000/- (Fifty Five lacs). Per contra, as per plaintiffs they have valued the suit as per the licence fee/ annual rent. In support of the contention, the defendant has not filed the valuation report from the Sub Registrar Office. It is the mere contention of the defendant as the approximate valuation of the

suit property. Moreover, the valuation of the suit is based upon the subject matter of suit and not as to market valuation of property. The suit has to be valued on the basis of subject matter. The pleadings in the plaint itself shows the proper valuation of the suit. Thus, the plaintiffs have valued the present suit and paid the proper court fees as per of the Court Fees Act.

17. The next contention of the defendant is that this court has no jurisdiction to try the present suit. As per the provision of Rent Control Act the disputes between landlord and tenant are considered. According to him, the dispute between the licensee or licensor shall be considered by the Small Causes Court. In the Shegaon town there is no Small Causes Court. As per the provision of Section 28 of Bombay Civil Court Act, Hon'ble High Court has empowered the powers of Small Causes Court to the Court of Civil Judge Jr Dn upto the valuation of Rs. 6000/-. And when there is no Court of Small Causes then such power shall be vested with the Civil Court to entertain the suit upto the valuation of Rs. 6000/-.

18. In support of this contention, Advocate for the defendant relied on *Radhyashaym Chandak case cited supra*. *Wherein Bombay High Court has considered the reference case. Wherein the question was whether the court invested with small cause power under section 28 of Bombay Civil Court Act , can exercise unlimited powers under chapter 4 sec 26 of provision of small cause court without ceiling on its pecuniary jurisdiction. Hon'ble Bombay high court on considering the entire facts has*

answered that a Civil Judge invested the jurisdiction of court of small causes under sec 28 (1) of the Bombay Civil Court Act can function as a court of small causes to the extent of pecuniary limits prescribed under sec 28(1) of Bombay Civil Court Act and it shall not have jurisdiction to entertain, try and decide the suits covered by the sec 26 (1) of Provincial Small Causes Court Act, irrespective of the value of the subject matter of such a suit.

19. Hon'ble Bombay High Court held in para no. 36 of *if the value of the subject matter of the suit covered by sec 26(1) of the Small Cause Court Act exceeds the pecuniary limits specified under sec 28 (1) of Civil Courts Act, then the Civil Judge invested with the jurisdiction of a court of small causes shall not have jurisdiction to entertain , try and decide such a suit as small cause suit of summary nature, but it will have to be decided as regular suit and procedure for deciding such a suit will be governed by the Code of Civil Procedure and not by the procedure prescribed under the Small Cause Court Act. The reason for this is that the High Court is not competent under sec 28 (1) of the Civil Court Act to invest any Civil Judge within jurisdiction of Court of Small Causes beyond the pecuniary limits specified in that section.*

20. The judgment of *Radhayasham Chandak* cited supra is pertaining to the case wherein a small cause suit was filed before Civil Judge Jr. Dn., Amravati. But in the present case the suit has been registered as Regular Civil Suit under the provision of section 33 of the Rent Control Act. The issue involved in that case was *whether the court invested with small cause powers under*

section 28 of the Small Causes Act can function as such and exercised unlimited jurisdiction under Chapter IV – A – 1 of 1887 Act, without any cealing on its pecuniary jurisdiction. The issue involved in that case is totally different. In the present case, the suit has registered as Regular Civil Suit as per the provision of section 33 of the Rent Control Act. Thus, the ratio laid down Radhyasham Chandak case cited supra is not applicable to the present case. It is not helpful to the defendant.

21. The defendant submitted that as per section 33 (2) (c) of Rent Control Act, the court of Civil Judge trying any suits, proceedings and any application shall be, for said purpose of such suits, procedure or application as a case may be deemed to be court of small causes. The defendant wants to submit before the court that this court be deemed as a Court of Small Causes. In that regard the plaintiffs have relied on *Masjid Alfudding case* cited supra wherein *Hon'ble Bombay High Court interpreted section 33 of the Rent Control Act and observed that the power to exercise the jurisdiction under Maharashtra Rent Control act is vested in small causes court. It in fact becomes a tribunal under the Maharashtra Rent Control Act. While dealing with the suit instituted under the rent control act , it does not function as a small causes court but functions as court constituted under the rent control act.*

22. In this regard it is important to note that the said judgment is in respect of section 33 of the Rent Control Act and Hon'ble High Court has considered the provision of section 26 of

Small causes Court Act. It is important to note that Hon'ble High Court has specifically observed that a court dealing with the suit under the Rent Control Act does not function as a Court of Small Causes but as a court constituted under the Rent Control Act. Further, it is considerable to note that in section 33 (1) of the Rent Control Act , it is provided *notwithstanding anything contained in any other law for time being in force, but subject to the provision of chapter VIII, and notwithstanding by reason of the amount of claim or for any other reason, the suit or proceeding would not but for this provision be within its jurisdiction.* Thus, when the suit is filed under section 33 of the Rent Control Act then the amount of claim is not to be taken into the consideration. And it is pertinent to note that for the Shegaon town there is no court of small causes.

23. Further, as per section 33 when there is no court of small causes then the power to decide the suits under the Rent Control Act is with the Civil Judge Jr.Dn. Section 33 (1) (c) is applicable to the Shegaon town. It is provided that the Court of Civil Judge Junior Division having jurisdiction in the area in which the premises are situate, shall have jurisdiction to entertain and try the suit. Therefore, I do not deem fit to rely on the contention of the defendant that Civil Judge Junior Division can exercise the jurisdiction upto valuation of only Rs.6000/- and it has no jurisdiction to try the present suit.

24. The above case laws adduced by the defendant are in respect of the jurisdiction of the Small Cause Court. It has

mentioned the pecuniary jurisdiction upto Rs. 6000/- in respect of Civil Judge Jr Dn. But in the Shegaon town there is no Court of Small Causes. As per sec 33 of the Rent Control Act when there is no court of small causes then the jurisdiction lie with the Court of Civil Judge Jr Dn. to try the case.

25. Further, as per the defendant when this court has found no jurisdiction then it has no other way except dismiss the suit. In support of his contention he relied on *Pradip Advertising Agency, Nagpur v/s Shri Aurbindo Circle, registered Society 2015 (2) Mh. L. J. 167*. I have gone through the cited case. This judgment is on the point of that whether the suit filed for recovery of possession of the open plot without letting out the ground or garden appurtenant to the building is covered under the definition of the 'premises'. But the present case is in respect of the shop premises it is not in respect of the open plot. Thus, this case law is not helpful to the defendant.

26. The next contention of the defendant is that the plaintiffs have not sent notice under section 106 of Transfer of Property Act. But as rightly pointed by Advocate for plaintiff that the said issue has decided by Hon'ble Apex Court in case of *Dhanpal Chettiyar* case cited supra that the issuance of notice under section 106 of Transfer of Property Act is not necessary. Thus, I found no substance in the contention of the defendant.

27. Considering the above discussion, the plaintiffs have properly valued the suit and paid the court fees. The court has a pecuniary jurisdiction to try the case. Thus, I found no substance in the contentions of the defendant. Thus, resultantly, I pass following order,

: ORDER :

- 1) The application (Ex.9) is rejected.
- 2) Parties and their Advocate do take note of the order.

Place : Shegaon

Date: 24.11.2017

(V.V. Kulkarni)

Civil Judge Junior Division
Shegaon, District Buldana.

