

R.C.S. No.14/2016
Gajanan Maharaj Sansthan
-Vs-
Amar Arun Sharma
CNR No.MHBU07-000664-2016.

ORDER BELOW EXH.180

[Passed on 19.12.2024]

1. This is an application filed by the defendant to dismiss the suit as not maintainable in view of the examination in chief of the plaintiff's witness or plaint be rejected under order 7 Rule 11 of CPC. Perused the application, say filed by the Ld. counsel for the plaintiff and written notes of the reply argument of the plaintiff and rejoinder to the reply argument of the plaintiff by the defendant. Heard Ld. Counsel for the defendant and Ld. Counsel for the plaintiff.

Submission of the defendant :-

2. Defendant submitted that he has filed the one application under order 7 rule 11 of the CPC for rejection of the plaint on the ground that the market valuation of the suit property has not been done properly and suit is required to be filed only before the rent court under section 33 of Maharashtra Rent Control Act. This court has rejected the said application. Defendant has filed Civil Revision Application No. 149/2018 before Hon'ble High Court and other occupant of the premises have also filed the Civil Revision Application No. 144/2018 to 155/2018 before Hon'ble High Court. All these revision application have been rejected by Hon'ble High Court with observation that provision of section 16(1)(c) and 16(1)(g) of Maharashtra Rent Control Act 1999 are applicable to the tenant who are in the occupation of the suit premises. Hon'ble High Court further held in revision application that it

appears from the perusal of the plaint that the defendant was initially given possession of suit block on nominal rent following which the execution of leave and license agreement for specific period was made and after the expiration of that period the occupation is continued. Hon'ble High Court held that the nature of pleading raised in the plaint cannot lead to the firm conclusion that defendant is treated as a licensee by the landlord and therefore it become the matter of trial and for that purpose, the issue 1(a) is already framed as "whether plaintiff prove that defendant is his licensee as per the agreement dated 30 April 2012 ?" Even the issue of valuation shall be dependent upon the decision as to whether defendant was treated as licensee or tenant.

3. Defendant further submitted that plaintiff has now adduced the evidence and submitted examination in chief on affidavit of Dipak Liladhar Patil. In para 6 of the examination in chief it is stated on oath that initially on the ground floor shop block were constructed and granted on leave and license basis for using the income derived from licensee for the charitable and religious purpose. The defendant was given such a shop block initially on nominal licensee fees for shop bearing shop no. 1 admeasuring 11 X 21 ft. situated below charitable hospital. It is also stated on oath for providing the facility to the devotee to perform the pooja i.e. flower, prasad etc, the shop block was given on license basis to the individual like defendant just to provide facility to the devotee.

4. Defendant further submitted that in para no. 11 of examination in chief it is stated on oath total 58 shop blocks including Umbrellas were initially granted on leave and

license basis on nominal license fees. Subsequently the specific leave and licensee agreement for the period of 11 months was signed and registered before sub registrar of Shegaon Town. Therefore all the 58 shop keeper were licensee as defined under the provision of Maharashtra Rent Control Act 1999. In para no. 14 of examination in chief of the Dipak Liladhar Patil the leave and license agreement registered on 28.06.2011 was expired on 30.06.2012. It is also stated on oath of examination in chief that suit is filed under section 16(1)(c)(g) of Maharashtra Rent Control Act. It is also stated on oath defendant is estopped from claiming the right of tenant in view of legal provision of Maharashtra Rent Control Act 1999 and in view of written registered leave and license agreement under Section 92 of Evidence Act.

5. Defendant further submitted that from the evidence of the plaintiff it can be concluded firmly that the plaintiff have treated the defendant as a licensee and not a tenant. Hon'ble High Court In CRA No. 149/2018 observed that the pleading shows that initially premises was given on rent and therefore firmly it cannot be concluded. From the evidence of the plaintiff it is now admitted that defendant is given the premises even initially as a licensee. Nowhere in the evidence of the plaintiff it is stated that defendant is occupying shop block as a tenant. From the evidence of the plaintiff the suit can be dismissed as not maintainable in view of provision of Section 33 of Maharashtra Rent Control Act. Defendant further submitted that it is already concluded that provision of section 16 are attracted only in respect of the tenant and not to the licensee.

6. Defendant further submitted that in order to

protect the possession from forcible or unlawful dispossession, the defendant has filed a suit along with other occupant in the court of Civil Judge Senior Division, Khamgaon by the way of Special Civil Suit No. 29/2012. Defendant further submitted that in Special Civil Suit No. 29/2012 after examination in chief of the one of the occupant Dnyaneshwar Trambak Sakhare defendant raised the objection that Special Civil Suit is not maintainable in view of Section 33 of Maharashtra Rent Control Act. Both party have been directed to advance their argument which was concluded. Thus, at the stage of the evidence in Special Civil Suit No. 29/2012 the Hon'ble Civil Judge Senior Judge suo moto has directed the party to establish that suit is maintainable.

7. Defendant further submitted that under the provision of section 33(1)(c) it is specifically provided that suit or proceeding would not, but for this provision be within its jurisdiction, elsewhere a court of Civil Judge Junior Division having jurisdiction in the area in which premises are situated or if there is no such court, it lies with Senior Division. In respect of the suit or proceeding between landlord and tenant relating to recovery of rent or possession of any premises and to decide any application made under this act and subject to provision of sub section 2 no other court shall have jurisdiction to entertain such suit proceeding or application or to deal with such a claim are question. In view of Specific provision if the suit is between the landlord and tenant in that event only Civil Judge Junior Division is treated as small cause civil court. This Civil Suit is filed as a small cause civil suit under the provision Maharashtra Rent Control Act but provision of said act are not applicable in respect of

the dispute of the licensor and licensee then suit itself is not maintainable and totally bar from taking cognizance by this Hon'ble court. The jurisdiction of the civil court junior division is only Rs. 6000/- in respect of the small causes case as per the provision of section 28 of the Maharashtra Civil Court Act. That the valuation of the suit is more than the jurisdiction of this Hon'ble court and therefore, in view of the evidence adduced by the plaintiff wherein there is clear stand that the defendant is a licensee, then the suit is not maintainable under the Maharashtra Rent Control Act and as held by the Hon'ble High Court it is liable to be dismissed, So also the valuation of the suit property will have to be determined only on the basis of market valuation of the property which is much more than the peculiarly jurisdiction of this Hon'ble Court. Hence, defendant prayed for dismissal of the suit as not maintainable under the Maharashtra Rent Control Act 1999.

Submission of the plaintiff :-

8. Ld. Counsel for the plaintiff strongly opposed the application and submitted that the application filed by the defendant with malafied intention to prolong the matter. It may be noted that defendant admitted earlier that they filed an application under order 7 rule 11 of the CPC. The said earlier application at Exh. 9 of the defendant was decided by order dated 24.11.2017. The application at Exh. 9 was filed on following ground.

i) That under section 6(xii) of the Bombay Court Fee Act 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 suit. It is claim that if relief is sought including the relief of possession the amount of fee shall be

full advolarum fee according to market value of the property. The valuation of the suit property is Rs. 20,000/- per square feet and hence the inquiry of valuation be conducted.

ii) According to section 26 of provincial small causes court it provides that suit in respect of the licensee is to be filed in the small causes court.

iii) Small causes court are not established in Shegaon. Hon'ble Bombay High court has empowered to invest the Civil Judge Junior Division in respect of the suit which are having the valuation less than Rs. 6000/-.

iv) As per the defendant this court is invested with the jurisdiction of the court of small causes under section 28(1) of small causes court act.

v) The plaintiff have not mentioned in the pleading the provision of the Rent Control Act are Attracted.

9. Plaintiff submitted that this Hon'ble Court in para no. 20 of the order below Exh. 9 dated 24.11.2017 observed that in the present case the suit have been registered as RCS as per the provision of Section 33 of the Rent Control Act. This court in pare 21 and 22 of the order dated 24.11.2017 observed by relying upon the judgment of Hon'ble Bombay High Court in Masjid Alaffuddin that it is important to note that the 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. This court further observed in its order that when the suit is filed under section 33 of Rent Control Act the amount of the claim is not to be taken into the consideration. This Hon'ble Court further observed in para no. 23 that as per section 33 when there is a no court of small causes the power to decide the suit under

the Rent Control Act is with Civil Judge Junior Division. Section 33(1)(c) is applicable to Shegaon Town. It is provided that the court of civil judge junior division having jurisdiction in the area in which the premises are situated, 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 up to valuation of of only Rs. 6000/- and it has no jurisdiction to try the present suit. This Hon'ble Court further observed in para no. 27 of the order that considering the above discussion the plaintiff properly valued the suit and paid the court fee. This court has a peculiarly jurisdiction to try the suit.

10. The plaintiff further submitted that the order below Exh. 9 was challenged by the defendant before Hon'ble High court in CRA No. 144/2018 to CRA No. 155/2018. Hon'ble High Court was pleased to disposed of all the writ petition by common judgment dated 18.11.2019. Hon'ble High Court in para no. 6 of the said judgment observed as under;

“The nature of the pleading raised in the aforesaid plaint cannot lead to firm conclusion that revisional applicant herein have been specifically treated as a licensee by the respondent. It is a interesting that in the written statement filed on behalf of revisional applicants, they themselves have claimed that they are tenant in the suit shop. Although, it is a settle position of law that while considering an application under order VII Rule XI of the code, only contents of the plaint needs to be appreciated and that what is stated in the written statement may not be relevant, but even perusal of the plaint in the present case would not lead specific conclusion that revisional applicant were inducted right from the initial stage as a licensee in the suit shop. Therefore, it becomes the

matter of trial and it is perhaps for this reason that the trial court had initially framed first issue amongst 14 issues as follow.

Whether the plaintiff prove the relation with the defendant as a landlord and tenant.

On a challenge raised by all the revisional applicant on the nature of the issue framed by the trial court, this court partly allowed the petition and substituted the above quoted issue no. 1 as follows.

- 1A) Whether plaintiffs prove that defendant is its licensee as per the agreement dated 30 April 2012.
- 1B) Whether defendant prove that he is the tenant of the plaintiff.

The above noted development clearly demonstrated that it is matter of trial upon leading the evidence by the rival parties as to whether revisional applicants are in the possession of the suit shop as a licensee or as a tenant. This clearly show that fundamental basis of the contention raised in the application under order 7 rule 11 of the code can be decided and put to rest only after full dress trial before the trial court in the pending suit. The only contention that would remained is the contention pertaining to valuation of the suit, which according to the revisional application ought to have been made on the basis of the value of the property in question and not on the basis of the licensee as claimed in the plaint. This issue would also be relatable to the aforesaid fundamental issue, apart from the fact the parties would be entitled to lead evidence and raised appropriate contention on the question of proper valuation of the suit. It is necessary to referred to issue no. 8 which has

been already framed by the trial court in this regard. In fact the perusal of the issue framed by the trial court, with the modification made by the order of this court, would show that all the objection sought to be raised on behalf of the revision applicants are already a matter of trial pending before the trial court.

11. The plaintiff further submitted that the defendant are just prolonging the trial of this case before this Hon'ble Court. This court observed in order dated 07.02.2024 below Exh. 155 that it appears that defendant has unnecessary moved present application just to delay the suit. The application is devoid of merit and it deserved to be rejected. This court has rejected the application with costs upon the defendants.

12. The plaintiff further submitted that the defendant further moved the application at Exh. 171 which came to be rejected as it is devoid of the merit. Even though the defendant did not obey the order of this court. Another application was filed at Exh. 172 which is rejected on 22.04.2024. Further the defendant filed an application at Exh. 177 for reducing the costs of Rs. 1500/- imposed by this court was rejected with further costs of Rs. 500/-. Plaintiff further submitted that in view of the above circumstances the case was fixed for the cross examination of the witnesses on 28.08.2024. The defendant who has no regard has filed again this application with malafied intention to prolong this matter with not honouring the verdict of this Hon'ble court and of Hon'ble High court in judgment dated 28.11.2019.

13. The plaintiff denied all other adverse contention

raised by the defendant in the application. Plaintiff submitted that this application is required to be dismissed with heavy costs of Rs. 25,000/- taking into consideration the prevailing fees structure of lawyer and other miscellaneous expenses. In order to impose heavy costs the plaintiff relied on judgment of Hon'ble Supreme Court in **Rameshwari Devi and Nirmala Devi in 2011 (8) SCC 249**. This authority would be discussed at appropriate place. With this contention the plaintiff prayed for rejection of this application with costs of Rs. 25,000/-.

14. It appears that defendant filed the instant application on two grounds which is as under;

- A) That this court has a no jurisdiction to try this suit in view of provision of 33 of Maharashtra Rent Control Act.
- B) The jurisdiction of this court is only Rs. 6000/- in respect of small causes cases as per the provision of section 28 of Maharashtra Civil Court Act.

15. The instant application is filed on the basis of the evidence affidavit of PW2 Dipak Liladhar Patil. The instant application is filed under order 7 rule 11 of CPC for rejection of the plaint. It is a well settled that to decide the application under order 7 rule 11 of CPC the only averment in the plaint has to be considered. Averment in the evidence affidavit of the plaintiff witness cannot be considered for the deciding the application under order 7 rule 11 of CPC. Despite that the defendant filed the instant application on the basis of the contention made in the evidence affidavit of Dipak Liladhar Patil. It is not the case of the defendant that the plaintiff has filed the evidence the content of which is beyond the pleading. The defendant only submitted that the plaint be

rejected on the basis of the evidence affidavit of PW2.

16. Defendant did not mention and explained as to how this application maintainable under order 7 rule 11 on the basis of evidence affidavit of Dipak Liladhar Patil. Moreover, the issue raised in this application regarding the jurisdiction of this court and valuation of the suit has been settled by this court and Hon'ble High Court by the virtue of the order on Exh. 9 and order of Hon'ble Bombay High Court in CRA No. 144/2018. This issue regarding the jurisdiction was set at rest by order of this court and order of Hon'ble Bombay High Court. Therefore, there is no need to discuss those contention raised by the defendant in the instant application as they have been decided by this court and Hon'ble Bombay High Court. Hon'ble Bombay High Court in its order observed that contention of the jurisdiction under order 7 rule 11 of the court can be decided and put to rest only after full dress trial before the trial court in the pending suit. The defendant is well aware of the observation of Hon'ble Bombay High Court. Still defendant keep on filing the application on the same ground which was decided by this court and Hon'ble Bombay High Court.

17. This matter is fixed for the evidence of the PW2 from 27.02.2024. The PW2 has filed the evidence affidavit and this matter is fixed for the cross examination of the PW2. Instead of taking the cross examination of PW2 the defendant continued to file an application without any substance.

18. I found the substance in the submission of the counsel of the plaintiff that this application is filed only to prolong the matter because contention raised in the instant

application has already been decided. The defendant did not explained and argued as to how this application is maintainable under order 7 rule 11 of CPC. Plaintiff relied on the judgment of Hon'ble Supreme Court in **Rameshwari Devi and others Vs. Nirmala Devi** wherein Hon'ble Apex Court dismiss the appeal with costs of Rs. 2 lakhs by observing that imposing costs needs to be decided by taking into consideration the prevalent fees structure of the lawyer and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit. The ratio laid down in above mentioned authority of Hon'ble Apex Court is squarely applicable to the present case where defendant keep on filing the frivolous application which is devoid of merit. As I discussed earlier the contention raised in the instant application has already been decided by this court and Hon'ble Bombay High Court. Therefore, this application is devoid of merit. This application appears to be filed to prolong the matter. Therefore, this application is required to be rejected with heavy costs keeping in view the principle laid down by Hon'ble Apex Court in Rameshwari Devi (Supra). In view of above discussion I am not inclined to allow this application and proceed to pass following order.

ORDER

1. The application is rejected with costs of Rs. 3000/- to be paid to the plaintiff.
2. No more application for reducing the costs from the defendant shall be entertained.

[N. D. Meshram]

Civil Judge Jr. Dn. Shegaon,
Dist. Buldana.

Date : 19.12.2024.

I, *P. K. Ingle*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.