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Presented on : 21/02/2018.

Registered on : 22/03/2018.

Decided on : 31/07/2019.

Duration : Ys. Ms. Ds.
01 04 09

**IN THE COURT OF ADHOC DISTRICT JUDGE-2, PUNE,
AT : PUNE.
(Presided over by S.P. PINGLE)**

**Misc. Civil Appeal No.113 /2018
Exh.**

{CNR No.MHPU01-002460-2018}

- 1. Shri Vishwas Vasant Kachare,**
Age : 40 Yrs., Occupation : Business,
- 2. Smt. Swati Vishwas Kachare.**
Age : 38 Yrs., Occupation : Business,

Both R/o: Gokul Building,
in front of Karishma Society
Sangam press road, Near Kasat Saree shop,
Pune 411 038.

.... Appellants.

V/s.

Shri Chandrabhan Tanabaji Pakhare,
Age : 58 Yrs., Occupation : Business,
R/o: Dodke Plaza, Flat No. 101, A-Wing,
Near Raghavdas Vidyalaya, Warje Malwadi,
Pune - 411058.

.... Respondent.

APPEARANCES :

Shri S.F. Ghuge, Adv. for the Appellant.

Shri B.R. Retwade, Adv. for the Respondent.

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: ORAL JUDGMENT :

(Delivered on this 31st day of July, 2019)

1] The present appeal against order is preferred under Order 43 Rule 1 of Code of Civil Procedure, being aggrieved & dissatisfied by the interim order passed below Exh.5 in Misc. Civil Application No. 66/2017 moved u/s 29 of the Maharashtra Rent Control Act, 1999, for restoration of electricity and water supply to the tenanted shop premises of respondent tenant whereby the learned Add. Small Causes Judge & Jt. Civil Judge, Sr.Dn., Pune, allowed the said application directing the appellant / original opponent / landlord to restore the electricity and water connection which was existing earlier before disconnection untill further orders.

2] In brief, it is the case of the respondent / original applicant / tenant in Misc. Civil Application No. 66/2017 that he is doing his business under the name and style as 'Kiran Tailors' in the suit shop at Survey No. 154, near Maruti temple bus stop, in front of Cosmos Bank, Kothurd, Pune - 38. Opponent / present appellant is his landlord. Thus, there is landlord and tenant relationship in between them. He is regularly paying the rent to the landlord. The tenancy was obtained by executing a tenancy agreement in 2001. He is paying electricity and water charges timely to the original landlord and after his death, to his son. Thus, doing his Tailoring business since last 15 to 16 years. However, after the death of original landlord, his son and wife are trying forcefully to dispossess him. They are abusing him and creating obstacle in front of his shop so as to see that the customers should face difficulty. Hence, the police complaint was lodged.

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Opponent / landlord using filthy and abusive language and disconnected the electrical and water connection so as to cause inconvenience in doing the business. Hence, the cause of action to move before the learned Trial Court for restoration of electrical and water connection.

3] The said application was resisted by the original opponent / landlord, i.e., present appellant by filing reply at Exh.28. It is categorically denied by them that they are harassing the tenant with malafide and vested interest to outs him. It is contended that there is no relationship of landlord and tenant as much as of a licensee or a licensor. It is contended that original landlord, i.e, father of opponent No.1, i.e., present appellant No.1 executed a Leave and License agreement on 15/02/2005 for 11 months. After the said period, the License was never renewed. It is denied that the rate was paid regularly with electrical and water charges as stated. It is denied that tenant was ever abused, threatened or trying to be forcefully dispossessed. Hence, prayed to reject the application.

4] After considering the rival pleadings, the learned Trial Court held that respondent / original applicant / tenant made out a prima facie case for restoration of essential supplies to him which were disconnected by the landlord. Therefore, found balance of convenience in favour of the tenant and came to the conclusion that in case, if the essential supplies were not restored, there is every likelihood that tenant may suffer, who is running his Tailoring shop and doing said business under the name and style as 'Kiran Tailors' and earning his bread and butter. Therefore, allowed the application and directed the

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landlord to restore the essential supplies of electricity and water forthwith until further orders.

5] Being aggrieved & dissatisfied by the said impugned order, judgment, the present appeal is preferred on the following grounds amongst others.

6] Firstly, the impugned order and judgment is challenged on the ground that the said order came to be passed without jurisdiction. Secondly, it is wrong and perverse and thirdly, no principles of equity, good concise and natural Justice has been followed and lastly, concluding that there is no relationship either of a landlord or tenant much less of a licensor or licensee. Hence, prayed to squash and set aside the impugned order and judgment being passed by the learned Trial Court lacking inherent jurisdiction to try and adjudicate the dispute amongst them. Hence, prayed to allow the appeal.

7] The following points arise for determination and findings of this Court thereon are for the reasons stated thereto.

POINTS

FINDINGS

- | | |
|--|-------------------------------------|
| 1] Whether the learned Trial Court passed the order without jurisdiction ? | .. In the negative. |
| 2] Whether the impugned order and judgment is perverse ? | .. In the negative. |
| 3] Whether the interference is required to the impugned order and judgment ? | .. In the negative. |
| 4] What order and cost ? | .. Misc. Civil Appeal is dismissed. |

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: **REASONS** :

8] Heard the learned Advocate S.F. Ghuge on behalf of the appellant / original opponent – landlord and Shri Mundhe holding for Advocate Retwade on behalf of the respondent tenant / original applicant, i.e., present respondent.

9] According to Shri Ghuge, there is no relationship of landlord and tenant much less of a licensee or licensor amongst the parties to the dispute for the reasons that the Leave and License Agreement which was executed in the year 2005 was for only 11 months. Subsequent thereof, after laps of period of license, the license was not renewed. Therefore, the learned Trial Court was not having jurisdiction to try and entertain the dispute amongst the parties. The learned Trial Court was lacking inherent jurisdiction to try the dispute amongst the parties. Despite the said fact, the learned Trial Court failed to appreciate and consider the said fact within the four corners of the law and erroneously granted the reliefs to the tenant / original appellant, who is the present respondent. Hence, prayed to squash and set aside the impugned order and judgment, which came to be passed erroneously without any cogent and just reasons being it is perverse.

10] Per contra, learned Advocate Shri Mundhe holding for Advocate Retwade submitted that u/s 29 of Maharashtra Rent Control Act 1999, the Court of Small Causes is vested with the jurisdiction under the Provincial Small Causes Court Act, 1887, to try the dispute amongst the landlord and tenants or licensor and licensee. It is contention of the appellant - landlord that the Leave and License

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Agreement was executed in the year 2005 for 11 months goes to show that there is relationship of licensee or licensor. Therefore, even if it is not considered that the said license was given according to the case of respondent tenant in the year 2001 and he is doing his tailoring business under the name and style as 'Kiran Tailors' since last 15 to 16 years, even then, if it is assumed that the license was given in the year 2005 even then it goes to show that the learned Trial Court was having and vested with the jurisdiction to try and adjudicate the dispute amongst either the landlord & tenants or licensor and licensee. Therefore, the learned Trial Court was vested with the jurisdiction. He further pointed out that the impugned order is well reasoned and passed in accordance with section 29 of the Maharashtra Rent Control Act, 1999. There is no perversity in it. Hence, prayed to dismiss the appeal.

11] After considering the submission of both the learned Advocates and having gone through the impugned order, judgment, paper-book and relevant provisions of Provincial Small Causes Act 1887 and section 29 of the Maharashtra Rent Control Act goes to show that the Court of Small Causes under the Provincial Small Causes Court Act, 1887 is vested with the powers to try, decide and adjudicate the dispute amongst the landlord and tenant or licensee or licensor. It is not disputed that respondent is in possession of the tenanted commercial premises, i.e., shop premises, who is running his tailoring business under the name and style, i.e., 'Kiran Tailors'. Be as it may, if assuming for the sake of argument that respondent - tenant is not occupying the suit shop as per his stand since 2001 and carrying on business since last 15 to 16 years and if the case of the appellant that

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the Leave and License was executed in the year 2005 for 11 months goes to show that the entry of the respondent - tenant was lawful that too under a tenancy agreement goes to show his lawful possession. Therefore, there is no substance that no relationship exist of a licensee or a licensor and therefore, for the said reason, the learned Trial Court lacking inherent jurisdiction to try and entertain the suit.

12] On the other hand, the moment, the relationship of licensee and licensor is once accepted, the learned Trial Court vested with the jurisdiction to try and entertain the dispute amongst them. So far as section 29 of the Maharashtra Rent Control Act, 1999 is concern, the learned Trial Court is vested with the powers to restore the essential supplies such as water, electricity etc. which have been disconnected by him, if such essential supplies disconnected without having any legal and valid reasons, unauthorizedly by high handed action. The learned Trial Court came to the conclusion that appellant - landlord nowhere denied the fact of disconnection of water and electric supply. The learned Trial Court also consider the fact that the allegations made by the tenant about his harassment with a view to evict him forcefully. Therefore, considering peculiar facts and circumstances of the case, directed the landlord - appellant to restore the essential supply untill further order, as it were pre-existing. I found no fault or any perversity in such finding. So also, there is no merits that the learned Trial Court have no jurisdiction and it lacking jurisdiction to try the dispute amongst them. Hence, I noted my finding accordingly to the point Nos. 1 to 3 in the negative and in answer to Point No.4, proceed to pass following order :

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: **ORDER** :

1. The Misc. Civil Appeal is dismissed with cost.
2. The impugned order passed below Exh.5 by the learned Trial Court is confirmed.

[Dictated, delivered & pronounced in open court]

PUNE
Dated : 31/07/2019.

(S.P. PINGLE)
Adhoc District Judge-2,
Pune.

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I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of the Steno : V.A. Endgallu. (Grade-1)
Name of the Court : S.P.PINGLE.
Adhoc District Judge-2, Pune.
Date : 31/07/2019.
Judgment signed by Presiding Officer on : 01/08/2019.
Judgment uploaded on : 01/08/2019.