IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) APPEALED FROM)

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others ... Petitioners

VERSUS

Shri. B. V. Narayan and Others ...Respondents

**WITH**

**I.A. NO. OF 2023**

**APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER DATED 27.11.2023**

**P A P E R B O O K**

(FOR INDEX PLEASE SEE INSIDE)

**ADVOCATE FOR THE PETITIONERS: AP&J CHAMBERS**

**SYNOPSIS**

That the instant Special Leave Petition is filed against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO) whereby the Hon’ble High Court had dismissed the civil revision petition.

It is submitted that the Impugned Order is contrary to both the statutory provisions and catena of judicial precedents as outlined below:

1. Under section 9 of the Karnataka Small Cause Courts Act, 1964 (“***the SCC Act***”) the exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance.
2. The full bench of the Hon’ble High Court in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532*** has held that theexclusive jurisdiction conferred under Section 9 of the SCC Act, would be determined only on the basis of rent payable for the year next before the presentation of the suit and nothing else.
3. The judgment in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532 w***as followed by the Coordinate benches in ***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590*** and ***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013*** and further held that ***“****for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance”****.*** Thus, quantum of the damages claimed by the Respondent/Plaintiff in the nature of mesne profit are irrelevant for the determination of the pecuniary jurisdiction of the Ld. Small Causes Court**.**
4. No action of the party can confer jurisdiction to the Civil Court on the subject matter, which is excluded by statute, as held by this Hon’ble Court in ***(2013) 10 SCC 136***, ***1954 SCC OnLine SC 11*** and ***(2005) 7 SCC 791.***

The civil revision petition before the Hon’ble High Court was filed against the order of the Court of XXII Additional City Civil and Sessions Judge, Bengaluru (“***Ld. Civil Court***”) dismissing the application, under Order 7 rule 10 of CPC, of the Petitioner for return of plaint in the suit bearing no. 3842/2018, filed by the Respondent seeking ejectment of the Petitioner from the suit scheduled property, as the jurisdiction of the Ld. Civil Court is specifically barred under section 9 r/w section 8 of the SCC Act.

The Hon’ble High Court had dismissed the appeal and partition suit respectively mainly on the following grounds;

1. That value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would outset the jurisdiction of the Court of Small Causes
2. The Petitioners/Defendant have not contested the jurisdiction at the earlier stage of proceedings.

It is respectfully submitted that the Hon’ble High Court and the Ld. Civil Court are in error and Impugned Order also liable to be set aside because:

1. **THE EXCLUSIVE JURISDICTION OF THE SMALL CAUSE COURT AND THE QUANTUM OF THE DAMAGES CLAIMED ARE IRRELEVANT TO THE DETERMINATION OF THE PECUNIARY JURISDICTION OF THE SMALL CAUSES COURT**
2. It is submitted that the High Court failed to appreciate under Section 9 of the SCC Act the exclusive jurisdiction to entertain a suit for ejectment of the tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance and where the value of the suit should not exceed two lakh rupees.

**Section 8. Cognizance of suits by Courts of Small Causes*.- (****1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.*

*(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of civil nature of which the value does not exceed “two lakh rupees” in Bangalore City, “one lakh rupees” in other places, shall be cognizable by a court of small causes.*

***Section 9. Exclusive jurisdiction of Courts of Small Causes****.—Save as expressly provided by this Act or by any other law for the time being in force,* ***a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction****, within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable*

1. It is submitted that the Hon’ble High Court had erred in holding the value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would outset the jurisdiction of the Court of Small Causes. The said finding of the Single Judge Bench of the Hon’ble High Court is directly contrary to the law laid down by the full bench of the Hon’ble High Court in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532.*** In the said judgement it is settled by the Hon’ble High Court that to determine the pecuniary jurisdiction of the Court of the Small Cause Courtwhat is relevant is the ‘rent’ payable for the year before the date of presentation of the plaint, for in terms of Sec. 41(2) of Karnataka Court Fees & Suits Valuation Act 1958 (“***KCFSV Act***”) and nothing else.
2. It is pertinent to mention that the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year next before the date of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- *(i.e. INR 1,375* x *12 months).* Thus, admittedlythe suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance.
3. It is also submitted that the Hon’ble High Court failed to appreciate that mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon’ble Court in ***Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd., 2023 SCC OnLine SC 1614***, has recently held that a suit for possession and a suit for mesne profit constitute distinct causes of action. Thus, the mere request for mesne profit cannot undermine the exclusive jurisdiction of the Ld. Small Cause Court over any cause of action.
4. It is also submitted that the Impugned Order is not only contrary to the aforestated full bench judgment but is also divergent from the judgement of the coordinate bench of the Hon’ble High Court, in ***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590*** wherein the Court had held as follows -

*9. As rightly contended by the Learned Counsel for the revision petitioners, future mesne profits will not determine the cause of action. The cause of action on the date of institution of the suit will have no relevance to the mesne profits which the defendant — Tenant would be liable to pay for occupation of the premises during the pendency of the suit. It would not be possible for the plaintiff to plead cause of action or to value his suit based on the future mesne profits for the purpose of pecuniary jurisdiction or for that matter for the purpose of payment of Court fee. Therefore, for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance*.

A similar view was taken in the case of ***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013,*** which held as follows:-

*It is clear, for the purpose of finding out the pecuniary jurisdiction of the court what is relevant is rent payable for one year prior to the presentation of the plaint and nothing else. The rent payable in the present case is Rs. 1,000/- per month which comes Rs, 12,000/- per annum. Therefore, the small causes court has jurisdiction to try the case. The impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed*.

1. **JURISDICTION TO CIVIL COURT CANNOT BE CONFERRED IF SUBJECT MATTER JURISDICTION IS OUSTED BY LAW**
2. It is submitted that the Hon’ble High Court has failed to appreciate that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties. Consequently, any decision of the court having no jurisdiction would amount to a nullity, as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings and the doctrine of waiver also does not apply. The aforesaid principle is reiterated by this Hon’ble Court in a plethora of judgments, e.g. ***Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136*** and ***Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791.***
3. It is submitted that this Hon’ble Court has in its judgment ***Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136*** has held the following:

***9.****Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply… “*

1. It is submitted that the mere fact that the Petitioner, had prayed for clubbing of suit filed for renewal of the lease with the Respondent’s suit seek ejectment, cannot confer jurisdiction upon the Ld. Civil Court over the subject matter, which is barred under the statute, i.e. the Small Cause Court Act. It is also apposite to mention that the division bench of the Hon’ble High Court has also held the aforesaid in ***Shivamurthi Mallayya Swami v. Mahadev Umarane, 1989 SCC OnLine Kar 2***, wherein it was held that:

*31. It is, therefore, clear that the fact that the defendant did not raise any objection to the jurisdiction of the Court of the Munsiff would not ensure for the benefit of the plaintiff to contend that the decree is not a nullity. Consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings. It is a well established rule of law that a nullity remains a nullity and can be so declared at any stage.*

*34. On facts, it is clear that when the suit was tried and disposed of, there was no jurisdiction in the Court of the Munsiff to try it. Having regard to the imperative command in Section 9 of the Small Cause Courts Act, the decree, in our opinion, has to be held as a nullity*.

1. Hence, the impugned judgment passed by the Hon’ble High Court requires to be interfered with as it is contrary to established precedents on the very same issue as has been confirmed by a full bench, a division bench and several co-ordinate benches of the Karnataka High Court. If the impugned judgment is not set-aside it would lead to chaos following the divergent interpretation of the jurisdiction of Small Cause Courts under section 9 of the SCC Act, 1964. For the aforesaid reasons and grounds the impugned judgment is liable to be set aside.

**LIST OF DATES & EVENTS**

|  |  |
| --- | --- |
| **DATES** | **EVENTS** |
| 18.07.1878 | The Respondent are members of Basetty Family, which have effected partition, of piece of land measuring 46,515 sq. feet, situated at H. Siddaiah Road, Bengaluru, was also partitioned among the members of the family. |
| January 1967 | On the basis of the partition deed dated 18.07.1878, the said land measuring 46,515 sq feet was divided among the following:   1. Land measuring 11,430 sq. ft. was allotted to Mr. B R Venkataramana Setty (*The Respondents are the legal heirs of Mr. B R Venkataramana Setty).* 2. Land measuring 23,738 sq ft. was allotted to the M/s Basetty Trust. 3. Land measuring 11,346 sq. ft. was allotted to Mr. B. Krishna Setty. |
| 29.01.1970 | The Petitioner entered into three separate registered lease deeds with s M/s Basetty Trust., Mr. B R Venkataramana Setty and Mr. B. Krishna Setty in respect of the land for 42+3 years with a condition of renewal for a further period of 45 years on certain conditions.  Consequent to taking the land on lease, the Petitioner constructed a cinema theatre, under the name and style of “***Urvashi Theatre***” on the said land and along with the adjoining land. |
| 30.05.2016 | The Petitioners herein by invoking clause contained in the lease deed, dated 29.01.1970, has filed a suit before the City Civil Court in O.S. 3861/2016, seeking extension of lease deed for further period of 45 years. |
| 21.03.2018 | Notice under Section 106 of the Transfer of Property Act by Respondent to vacate and handover the vacant possession of Urvashi Theatre on expiry of lease period. |
| 30.05.2018 | The Respondents (*i.e. the Legal Representative of Venkataramana Setty*) herein have filed a suit against the Petitioners before the Ld. City Civil Judge, Bengaluru (CCH-7) in O.S.No.3842/2018 for possession and also for damages at the rate of Rs.12,50,000/- per month till the date of handing over the possession of the Suit Schedule Property. It is pertinent to mention that the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year next before the date of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- *(i.e. INR 1,375* x *12 months).* Thus, admittedlythe suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance. A True copy of plaint in OS No.3842 of 2018 along filed by the Respondent Nos.1 to 5 dated30.05.2018 before the Ld. City Civil Judge, Bengaluru (CCH-7) is annexed herewith and marked as **ANNEXURE-P/1 (Pgs. To )** |
| 27.10.2018 | The Petitioner contested the suit by filing a Written Statement. A true copy of written statement filed by the Petitioners in O.S. No.3842/2018 before the Ld. City Civil Judge, Bengaluru (CCH-7) dated 27.10.2018 is annexed herewith and marked as **ANNEXURE-P/2 (Pgs. To )** |
| 21.09.2023 | The Petitioners herein took the note of lack of jurisdiction of the Ld. Civil Court in view of the Section 8 r/w 9 of the SCC Act. Accordingly, the Petitioners on 21.09.2023 have filed an application under Order VII Rule 10 of CPC with a request to return the plaint for want of jurisdiction on the ground that the rent payable for one year before the presentation of the plaint was only a sum of Rs.16,500/- which is less than Rs.2,00,000/- in view of Section 9 r/w Section 8(2) of SCC Act and Schedule (4) of the SCC Act, the Small Causes Court has the exclusive jurisdiction over the relief and suit filed by the Respondent. A true copy of the application under Order VII Rule 10 filed by the Petitioners/Defendants before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru in OS No.3842/2018 is annexed herewith and marked as **ANNEXURE-P/3 (Pgs. To )** |
| 22.09.2023 | However, the said application filed by the Petitioner was opposed by the Respondents by filing the objections to the application. A true copy of the objections filed by the Respondents to the application of the Petitioners/Defendants before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru in OS No.3842/2018 dated 22.09.2023 is annexed herewith and marked as **ANNEXURE-P/4 (Pgs. To )** |
| 25.09.2023 | That the Ld. City Civil Court, vide its order dated 25.09.2023 without properly appreciating the facts and law has dismissed the application filed for return of plaint, filed by the Petitioners herein. A true copy of the order dated 25.09.2023 passed by the Court of the XXII Additional City Civil and Sessions Judge, Bangalore City in O.S. No.3842 of 2018 is annexed herewith and marked as **ANNEXURE-P/5 (Pgs. To )** |
| 26.09.2023 | That being aggrieved by the order dated 25.09.2023 passed by the Ld. City Civil Judge, the Petitioner herein preferred Civil Revision Petition No.630 of 2023 (IO) before the Hon’ble High Court of Karnataka at Bengaluru. A true copy of the Civil Revision Petition No.630 of 2023 (IO) dated 26.09.2023 filed by the Petitioners before the Hon’ble High Court of Karnataka at Bengaluru is annexed herewith and marked as **ANNEXURE-P/6 (Pgs. To )**. |
| 27.11.2023 | That the Hon’ble High Court of Karnataka at Bengaluru vide its final judgment and order dated 27.11.2023 passed in Civil Revision Petition No.630 of 2023 (IO) dismissed the petition of the Petitioners in complete disregard of the contentions raised by the Petitioners. **(IMPUGNED ORDER)** |
| 19.12.2023 | Hence the instant Special Leave Petition. |

**‘A’**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) APPEALED FROM)

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others ... Petitioners

VERSUS

Shri. B. V. Narayan and Others ...Respondents

**OFFICE REPORT ON LIMITATION**

1. The Petition is /are within time.
2. The Petition is barred by time and there is delay of days in filing the same against impugned order dated 27.11.2023 and petition for condonation of days delay has been filed.
3. There is delay of days in refilling the Petition and petition For condonation of delay in refilling has been filed.

BRANCH OFFICER

NEW DELHI

DATED: 19.12.2023

**IN THE SUPREME COURT OF INDIA**

**{S.C.R. ORDER XXI RULE 3 (1) (A)}**

**CIVIL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITON (C) NO. OF 2023**

**(Under Article 136 of the Constitution of India)**

**WITH A PRAYER FOR INTERIM RELIEF**

(Against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) APPEALED FROM)

**POSITION OF PARTIES BEFORE**

**TRIAL COURT HIGH COURT THIS HON’BLE COURT**

**Civil Revision Petition No. 630 OF 2023(IO)**

**IN THE MATTER OF:-**

1. M/s Sreenivas Enterprises

Represented by the Managing Partners:

Sri.K.R.Ravishankar &

Smt.Anitha Ravishankar,

Vittoba Temple Street,

Doddaballapura,

Doddaballapura Taluk,

Bengaluru-561203

KARNATAKA Def No.1 Petitioner No.1 Petitioner No.1

1. Sri. K.R. Ravishankar

S/o K.C.Rudre Gowda,

Aged about 64 Years,

Managing Partner,

M/s. Sreenivasa EnterPrises

C/o Urvashi Theatre,

No.K-40, H.Siddaiah Road,

Bengaluru-560027

Karnataka Def No.2 Petitioner No.2 Petitioner No.2

1. Smt. Anitha Ravishankar

W/o K.R.Ravishankar,

Aged about 60 Years,

M/s. Sreenivasa EnterPrises

C/o Urvashi Theatre,

No.K-40, H.Siddaiah Road,

Bengaluru-560027.

Karnataka Def No.3 Petitioner No.3 Petitioner No.3

VERSUS

1. Shri B.V. Narayan

S/o Late B.V. Venkataramana Setty

Aged about 86 years

R/at No.100/24, 10th ‘D’ Main Road,

1st Block, Jayanagar,

Bengaluru-560011

Karnataka Plaintiff No.1 Respondent No.1 Respondent No.1

1. Sri B. V. Chandrasekar

S/o B.R.Venkataramana Setty,

Aged about 79 Years,

residing at No.100/24,

10th ‘D’ Main Road, 1st Block,

Jayanagar, Bengaluru-560011

Karnataka Plaintiff No.2 Respondent No.2

Since Dead Through LRs

1. SMT. JALAJA SHEKAR

W/O. LATE B.V.CHANDRASHEKAR

AGED ABOUT 69 YEARS

R/AT. NO.100/24

10TH ‘D’ MAIN ROAD

1ST BLOCK, JAYANAGAR

BANGALORE 560 011

KARNATAKA NA Respondent No.2(a) Respondent No.2

1. SRI. HEMANTH CHANDRASHEKAR

S/O. LATE B.V.CHANDRASHEKAR

AGED ABOUT 46 YEARS

R/AT. NO.100/24

10TH ‘D’ MAIN ROAD

1ST BLOCK, JAYANAGAR

BANGALORE 560 011

KARNATAKA NA Respondent No.2(b) Respondent No.3

1. SRI. ANUP BANGALORE CHANDRASHEKAR

S/O. LATE B.V.CHANDRASHEKAR

AGED ABOUT 43 YEARS

ALL ARE R/AT. NO.100/24

10TH ‘D’ MAIN ROAD

1ST BLOCK, JAYANAGAR

BANGALORE 560 011

KARNATAKA NA Respondent No.2(c) Respondent No.4

**ALL THE RESPONDENT ARE CONTESTING RESPONDENTS**

**PARTIES ARE SAME AS BEFORE THE HIGH COURT**

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE HON’BLE SUPEREME COURT OF INDIA

THIS HUMBLE PETITION OF THE PETITIONERS ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO) whereby which the Hon’ble High Court has dismissed the civil revision petition of the Petitioners herein.

1A. No LPA, Special Appeal & Writ Petition/Writ Appeal lies against the Impugned order.

1. **QUESTIONS OF LAW :**

The following questions of law of general public importance arise in the facts of the instant case which merits an authoritative determination from this Hon’ble Court:

* 1. Whether the Hon’ble High Court failed to appreciate that under section 9 of the Karnataka Small Cause Courts Act, 1964, exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance?
  2. Whether the Hon’ble High Court failed to appreciate that the exclusive jurisdiction conferred under Section 9 of the Karnataka Small Cause Courts Act, 1964, would be determined only based on rent payable for the year before the presentation of the suit and nothing else, as held by the full bench of the Hon’ble High Court in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532*** and followed by the Coordinate benches in ***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013*** ?
  3. Whether the Hon’ble High Court has failed to appreciate that the quantum of the damages claimed by the Respondent/Plaintiff in the nature of mesne profit are irrelevant for the determination of the pecuniary jurisdiction of the Ld. Small Causes Court as was held in the case of ***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590*?**
  4. Whether the Hon’ble High Court could have ignored the valuation specified by the Respondent in the valuation sheet of the suit, where the plaint was valued under Section 41 (2) of the Karnataka Court Fees & Suit Valuation Act 1958, for the relief of ejection of the petitioner from schedule property?
  5. Whether the Hon’ble High Court failed to notice that this Hon’ble Court have in a catena of cases held that the consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings?
  6. Whether the Hon’ble High Court failed to appreciate that having regard to the mandate of section 9 of the Karnataka Small Cause Court Act, the proceeding before the Ld. City Civil Court is a nullity, as it is a well-established rule of law that a nullity remains a nullity and can be so declared at any stage ?
  7. Whether the Hon’ble High Court failed to appreciate that, mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon’ble Court in ***Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd., 2023 SCC OnLine SC 1614***, has held that a suit for possession and a suit for mesne profit constitute distinct causes of action. ?
  8. Whether the Hon’ble High Court erred in overlooking the principle laid down by this Hon’ble Court in ***Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136*** and ***Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791* ?**

1. **DECLARATION IN TERMS OF RULE 3 (2) :**

The Petitioner states that no other Petition seeking special leave to appeal has been filed by the Petitioner against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO).

1. **DECLARATION IN TERMS OF RULE 5 :**

The Petitioner states that the annexures being Annexures P/1 to P/6 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/ Judgment the leave to appeal is sought in the present Petition.

1. **GROUNDS :**

The instant petition seeking special leave to appeal is being filed on, among others, the following grounds which may be considered as being without prejudice to each other:

1. Because under section 9 of the Karnataka Small Cause Courts Act, 1964 (“***the SCC Act***”) the exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance.
2. Because the exclusive jurisdiction conferred under Section 9 of the SCC Act, would be determined only on the basis of rent payable for the year next before the presentation of the suit and nothing else, as held by the full bench of the Hon’ble High Court in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532*** and followed by the Coordinate benches in ***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590*** and ***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013.***
3. Because the High Court failed to appreciate under section 9 of the SCC Act the exclusive jurisdiction to entertain a suit for ejectment of the tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance and where the value of the suit should not exceed two lakh rupees.

**Section 8. Cognizance of suits by Courts of Small Causes*.- (****1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.*

*(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of civil nature of which the value does not exceed “two lakh rupees” in Bangalore City, “one lakh rupees” in other places, shall be cognizable by a court of small causes.*

***Section 9. Exclusive jurisdiction of Courts of Small Causes****.—Save as expressly provided by this Act or by any other law for the time being in force,* ***a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction****, within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable*

1. Because the Hon’ble High Court had erred in holding the value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would outset the jurisdiction of the Court of Small Causes. The said finding of the Single Judge Bench of the Hon’ble High Court is directly contrary to the law laid down by the full bench of the Hon’ble High Court in ***Abdul Wajid v. A.S. Onkarappa, 2010 SCC OnLine Kar 4532.*** In the said judgement it is settled by the High Court that for the purpose of finding out the pecuniary jurisdiction of the Court of Small Cause Courtwhat is relevant is the ‘rent’ payable for the year before the date of presentation of the plaint, for in terms of Sec. 41(2) of Karnataka Court Fees & Suits Valuation Act 1958 (“***KCFSC Act***”) and nothing else. Relevant parts of the aforementioned judgment are as follows:

***93.****…...* ***What is relevant for the purpose of deciding the pecuniary jurisdiction of the Court in terms of Sec. 41(2) of KCFSV Act is the ‘rent’ payable for the year next before the date of presentation of plaint****. Law does not insist the landlord to file the suit soon after the expiry of the period of lease or expiry of fifteen days from the date of service of notice of termination of lessee, as, Article 67 of Limitation Act prescribes a period of twelve years from the date of determination of tenancy for a landlord to file a suit to recover possession from the tenant. Even if a suit for ejectment is filed after lapse of one year of determination/termination of lease/tenancy, for the purpose of finding out the pecuniary jurisdiction of the Court what is relevant is the rent payable for one year prior to the presentation of the plaint. As the consideration paid or payable by an erstwhile non-statutory tenant after determination/termination of lease is only mesne profits or damages, and no rent is payable thereafter, by way of Explanation to Sec. 41(2), the term ‘rent’ used in the said section is made inclusive of damages for use and occupation payable by a tenant holding over.* ***Therefore, the term ‘rent’ occurring in Clause (b) of Article 4 of the Schedule, is referable only to the ‘Rent’ payable for the year next before the presentation of the plaint in terms of Sec. 41(2) of KCFSV Act, for the purpose of finding out the pecuniary jurisdiction of the Court of Small Causes and nothing else***

*98. Therefore, we hold that Courts of Small Causes have jurisdiction to take cognizance of not only a bare suit for Ejectment but also a suit for Ejectment with a prayer for recovery of mesne profits or damages, in respect of the premises to which KR Act is not applicable. In view of this, we hold that the interpretation placed by the Division Bench in Sarojamma's case, on Clause (b) of Article 4 of Schedule to KSCC Act does not lay down the correct law****.***

1. Because the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year before the date of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- *(i.e. INR 1,375* x *12 months).* Thus, admittedlythe suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance.
2. Because the Hon’ble High Court failed to appreciate that, mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon’ble Court in ***Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd., 2023 SCC OnLine SC 1614***, has held that a suit for possession and a suit for mesne profit constitute distinct causes of action. Hence, the mere request for mesne profit cannot undermine the exclusive jurisdiction of the Ld. Small Cause Court over any cause of action.
3. Because the Impugned Order is not only contrary to the aforestated full bench judgment but is also divergent from the judgement of the coordinate benches of the Hon’ble High Court, namely ***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590*** and ***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013,*** wherein the Court had held that for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance***.*** Relevant extract judgments are reproduced below:

***Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590***

*9. As rightly contended by the Learned Counsel for the revision petitioners, future mesne profits will not determine the cause of action. The cause of action on the date of institution of the suit will have no relevance to the mesne profits which the defendant — Tenant would be liable to pay for occupation of the premises during the pendency of the suit. It would not be possible for the plaintiff to plead cause of action or to value his suit based on the future mesne profits for the purpose of pecuniary jurisdiction or for that matter for the purpose of payment of Court fee. Therefore, for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance*.

***M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013.***

*It is clear, for the purpose of finding out the pecuniary jurisdiction of the court what is relevant is rent payable for one year prior to the presentation of the plaint and nothing else. The rent payable in the present case is Rs. 1,000/- per month which comes Rs, 12,000/- per annum. Therefore, the small causes court has jurisdiction to try the case. The impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed*.

1. Because no action of the party can confer jurisdiction to the Civil Court on the subject matter, which is excluded by statute, as held by this Hon’ble Court in ***(2013) 10 SCC 136***, ***1954 SCC OnLine SC 11*** and ***(2005) 7 SCC 791.***
2. Becausethe Hon’ble High Court has failed to appreciate that it is settled law that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties and the decision of the court having no jurisdiction over the matter would be a nullity, as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings and the doctrine of waiver also does not apply. The aforesaid principle is reiterated by this Hon’ble Court in a plethora of judgments, e.g. ***Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136*** and ***Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791.***
3. Becausethis Hon’ble Court has in its judgment ***Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136*** has held the following:

***9.****Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply… “*

1. Because the mere fact that the Petitioner, had prayed for clubbing of suit filed for renewal of the lease with the Respondent’s suit seeking ejectment, cannot confer jurisdiction upon the Ld. Civil Court over the subject matter, which is barred under the statute, i.e. the Small Cause Court Act. It is also apposite to mention that the division bench of the Hon’ble High Court has also held the aforesaid in ***Shivamurthi Mallayya Swami v. Mahadev Umarane, 1989 SCC OnLine Kar 2***, wherein it was held that:

*31. It is, therefore, clear that the fact that the defendant did not raise any objection to the jurisdiction of the Court of the Munsiff would not ensure for the benefit of the plaintiff to contend that the decree is not a nullity. Consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings. It is a well established rule of law that a nullity remains a nullity and can be so declared at any stage.*

*34. On facts, it is clear that when the suit was tried and disposed of, there was no jurisdiction in the Court of the Munsiff to try it. Having regard to the imperative command in Section 9 of the Small Cause Courts Act, the decree, in our opinion, has to be held as a nullity*.

1. Because the impugned judgment passed by the Hon’ble High Court requires to be interfered with as it is in disregard of the above-mentioned grounds and liable to have interfered and set aside
2. **GROUNDS FOR INTERIM RELIEF :**

(1) That the instant petition seeking special leave to appeal is being filed by the Petitioners above named against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO)whereby which the Hon’ble High Court has dismissed the Civil Revision Petition of the Petitioners herein.

(2) That the Petitioners have a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition.

(3) That the balance of convenience is also lies in the favour of the Petitioners and the Petitioners will suffer grave hardship if the interim relief as prayed for is not granted.

(4) That the Petitioners will suffer great irreparable harm if the Impugned Order is not stayed during the pendency of the instant Special Leave Petition.

(5) That therefore it is in the interests of justice that the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO) and the proceedings in OS No.3842/2018 beforethe Court of XXII Additional City Civil and Sessions Judge, Bengaluru may be stayed during the pendency of the instant Special Leave Petition.

1. **MAIN PRAYER :**

In the facts and circumstances mentioned above an in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Grant special leave to appeal against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO); and
2. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.
3. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Stay the operation and effect of the against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO); and
2. Stay the proceedings in OS No.3842/2018 beforethe Court of XXII Additional City Civil and Sessions Judge, Bengaluru
3. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY**

**DRAWN BY & FILED BY:**

**AP&J CHAMBERS**

**ADVOCATE FOR THE PETITIONERS**

**DRAWN ON: 19.12.2023**

**FILED ON: 19.12.2023**

**NEW DELHI**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others ... Petitioners

VERSUS

Shri. B. V. Narayan and Others ...Respondents

**CERTIFICATE**

“Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given o the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.”

**FILED BY:**

**(AP&J CHAMBERS)**

**NEW DELHI: ADVOCATE FOR THE PETITIONERS**

**FILED ON: 19.12.223**

**PROFORMA FOR FIRST LISTING**

**SECTION –II-C**

**The case pertains to (Please tick/check the correct box):**

|  |  |  |  |
| --- | --- | --- | --- |
| |  | | --- | |  | | Central Act: (Title) | |
| |  | | --- | |  | | Section: **\_** | |
| |  | | --- | |  | | Central Rule: (Title)  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | |
| |  | | --- | |  | | Rule No(s):  **\_N/A** | |
| |  | | --- | |  | | State Act: (Title) **N/A** | |
| |  | | --- | |  | | Section:  **N/A** | |
| |  | | --- | |  | | State Rule: (Title) **\_ N/A** | |
| |  | | --- | |  | | Rule No(s): **\_N/A** | |
| |  | | --- | |  | | Impugned Interim Order: (Date) **\_\_N/A\_\_\_\_** | |
| |  | | --- | |  | | Impugned Final Order/Decree: (Date) **27.11.2023** | |
| |  | | --- | |  | | High Court: (Name) **High Court of Karnataka at Bengaluru** | |
| |  | | --- | |  | | Names of Judges: **Hon’ble Mr. Justice R Nataraj** | |
| |  | | --- | |  | | Tribunal/Authority: (Name) **\_N/A** | |
|  |  | |
| 1. | |  |  |  |  | | --- | --- | --- | --- | | Nature of matter: | |  | | --- | | √ | | Civil | | |  |  |  | | --- | --- | --- | | |  | | --- | |  | | Criminal | |
| 2. | (a) Petitioner/Appellant No.1: M/s Sreenivas Enterprises and Others | |
|  | (b) e-mail ID: **\_ \_\_\_\_\_\_\_\_\_\_\_ N/A** | |
|  | (c) Mobile Phone Number: **\_ N/A** | |
| 3. | (a) Respondent No.1**:** Sri. B.V. Narayan and Others | |
|  | (b) e-mail ID: **\_N/A** | |
|  | (c) Mobile Phone Number: **\_N/A** | |
| 4. | (a) Main category classification:  **18** | |
|  | (b) Sub classification:  **1807** | |
| 5. | Not to be listed before: **\_N/A** | |
| 6. | (a) Similar disposed of matter with citation,  if any, & case details: **\_ No similar disposed off matter**  (b) Similar pending matter with case details: **NO SIMILAR MATTER PENDING** | |
| 7. | **Criminal Matter: N/A** | |
|  | (a) Whether accused/convict has surrendered: | |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | |  | | --- | |  | | Yes | |  | | --- | |  | | No | |
|  | (b) FIR No. **\_N/A**  Date: **\_N/A** | |
|  | (c) Police Station: **\_N/A** | |
|  | (d) Sentence Awarded: **\_N/A** | |
|  | (e) period of sentence undergone including period of Detention/Custody undergone  **N/A** | |
| 8. | **Land Acquisition Matter:** | |
|  | (a) Date of Section 4 notification: **\_N/A** | |
|  | (b) Date of Section 6 notification: **\_N/A** | |
|  | (c) Date of Section 17 notification: **\_N/A** | |
| 9. | **Tax Matter:** State the tax effect: **\_N/A** | |
| 10. | Special Category (first Petitioner/Appellant Only): **N/A** | |
| |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  | | --- | |  | | Senior Citizen > 65 years | | | |  | | --- | |  | | SC/ST | |  | | --- | |  | | Woman/Child | |  | | --- | |  | | Disabled | |  | | --- | |  | | Legal | |  | Aid case | |  | | --- | |  | | In custody | | | | | | | | | | | |
| 11. | Vehicle Number (in case of Motor Accident Claim Matters): **N/A** | |
|  |  | |

Filed by:

Date: 19.12.2023 (M/S AP&J CHAMBERS)

AOR FOR PETITIONERS

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2023

IN

SPECIAL LEAVE PETITION (C) NO. OF 2023

**IN THE MATTER OF:**

M/s Sreenivas Enterprises and Others ... Petitioners

VERSUS

Sri. B. V. Narayan and Another ...Respondents

**APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER DATED 27.11.2023**

To,

The Hon'ble Chief Justice of India

and his companion Justices of the Supreme Court of India.

The humble petition of the Petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner above named has filed the accompanying present Special Leave Petition in this Hon’ble Court under Article 136 of the Constitution of India against the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO).
2. That the facts of the case and the grounds arising there from have been stated in the accompanying petition and are not being reproduced here for the sake of brevity. The Petitioner craves leave to rely on the said facts and grounds, and they may be considered part and parcel of the instant application.
3. That the Petitioner submits that the matter is urgent in nature in view of the fact that the Impugned Order dated 27.11.2023 is uploaded on the Karnataka High Court’s website on 14.12.2023 and therefore, the Petitioners were not able to obtain certified copy of the Impugned order.
4. That as aforesaid it is expedient in the interest of justice that the Petitioner may be permitted to file the instant Special Leave Petition owing to the urgent facts of the case without certified copy of the final judgment and order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO).

**PRAYERS**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Exempt the Petitioner from filing certified copy of the final Judgment and Order dated 27.11.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO); and
2. Pass any further Orders this Hon'ble Court may deem fit in and proper under the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL BE EVER GRATEFUL.**

**FILED BY:**

**(M/S AP&J CHAMBERS)**

**ADVOCATE FOR THE PETITIONERS**

**NEW DELHI**

**DATED: 19.12.2023**

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