Sushila Kashinath Dhonde & Ors vs Harilal Govindji Bhogani & Ors on 17 October, 1969

Equivalent citations: 1971 AIR 1495, 1970 SCR (2) 950, AIR 1971 SUPREME COURT 1495, 1969 RENCR 996, 1970 RENCJ 138, 1971 (1) SCJ 145, 1971 MAH LJ 670, 1970 2 SCR 950, 1973 BOM LR 320

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Bench: C.A. Vaidyialingam, J.M. Shelat, I.D. Dua

PETITIONER:
SUSHILA KASHINATH DHONDE & ORS.

Vs.

RESPONDENT:
HARILAL GOVINDJI BHOGANI & ORS.

DATE OF JUDGMENT:
17/10/1969

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.
DUA, I.D.

CITATION:
1971 AIR 1495 1970 SCR (2) 950
CITATOR INFO :
RF 1980 SC1605 (17)

ACT:
Bombay Rents Hotel and Lodging Houses Rates Control Act 1947 (Bom. 57 of 1947), ss. 18(3) and 28(1)-Loan advanced by prospective tenant for construction of building-Deed of charge as contemplated by s. 18(3) executed between parties-Premises not let out to person advancing money-Suit for money advanced whether one under s. 28 of Act-Relationship of landlord and tenant whether necessary-Meaning of words "any claim or question arising out of this Act or any of its, provisions"-Jurisdiction of Court of Small Causes.

HEADNOTE:

Respondent no. 1 as plaintiff instituted a suit in the court of Small Causes at Bombay against respondent no. 2 and its three, partners respondents 3 to 5. The appellants herein were also impleaded as defendants. According to the plaint respondents 2 to 5 were constructing a building in Greater Bombay with the purpose of letting out portions of it to tenants. Desiring to take, a portion of the building on a monthly tenancy respondent no. 1 advanced a sum of Rs. 12,500 as a loan towards the construction of the building. A deed of charge as contemplated by s. 18(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was executed between the parties and registered with the Sub-Registrar of Bombay. However after the building was completed respondents 2 to 5 did not let any portion to respondent no. 1 and, further, they sold the building to the appellants. The appellants having purchased the building burdened with the charge for the loan advanced by respondent no. 1 were also. according to respondent no. 1, liable to repay the said amount with 4% interest thereon. The Court of Small Causes decreed the suit; so did the first appellate court. The High Court rejected the appellant's petition under Art. 227 of the Constitution. Appeal in this Court was filed by special leave. The contentions of the appellants were (i) that the relationship between the parties was not one of landlord and tenant and therefore the suit was outside the jurisdiction of the court of Small Causes under s. 28 of the Act; (ii) that the charge created by the deed executed between respondent no. 1 and respondents 2 to 5 did not give rise to "any claim or question arising out of this Act or any of its provisions" but was based on contract, and !for this reason also the court of Small Causes had no Jurisdiction under 28 of the Act to entertain and deal with the proceedings.

HELD : (i) Having regard to the relevant aspects and the provisions of s. 18(3) and s. 28(i) it is not necessary that there should be a relationship of landlord and tenant in respect of all the matters covered by s. 28(1) of the Act, so as to give jurisdiction to the Court of Small Causes. One type of action contemplated under that section viz., a suit or proceeding for recovery of rent or possession. of any premises to which any of the provisions of Part 11 apply may be between a landlord and a tenant; but in respect of the other matters dealt with in that sub-section, it is not necessary that the relationship of landlord and tenant should exist between the parties before the court. [958 B-C]

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Shivaling Gangadhar v. Navnitlal Amritlal, I.L.R. (1958) Bom. 890, Bishan v. Maharashtra W. & G. Co. (1967) B.L.R. 229 and Bombay Grain Dealers v. Lakhmichand, (1967) 71 Bom. L.R. 179, referred to.

Importers and Manufacturers Ltd. v. Pheroze Framrose Taraporewala, [1955] S.C.R. 226, applied and explained.

(ii) A perusal of the various clauses of the agreement in the present case clearly showed that the loan given by the first respondent to respondents 2 to 5 was for the purpose of financing the erection of the building on the land in question held by the landlords as owners and that the agreement was in writing and had been registered. It also included the various conditions in s. 18(3). Therefore it was clear that the arrangement by way of an advance of the construction loan and conditions imposed therein and the manner in which the deed of charge had been executed were in accordance with s, 18(3) of the Act and the arrangement was one permissible under that sub-section. [964 D-E]

Having due regard to the nature of the transaction entered into between the parties viz., the deed of charge and the provisions of s. 18(3) read with s. 28 of the Act, it must be held that the subject matter of the proceedings invited by the plaintiff related to claims and questions arising out of the Act. The question regarding the nature of the transaction, whether it is saved by s. 18(3) of the Act, and the nature of the relied to be granted to the plaintiff are all claims or questions arising out of the Act and can be dealt with only by the special court constituted under s. 28 of the Act. No doubt the deed of charge furnishes, the cause of action; but its legality, validity and binding nature and other incidental matters connected therewith are all questions arising out of the Act. Accordingly the contention of the appellants that the 'rights of the plaintiff did not flow from the Act or any of its provisions but from the contract, could not be accepted. [965 B-D]

In re Hawke. Ex. Parte Scott, L.R. 16 Q.B.D. 503, Tliompson & Solis v. Norih Eastern Marine Engineering Company, L.R. [1903] 1 K.B.D. 428 and Government of Gihrolter v. Kenney, L.R. 119561 3 All. E.R. 22, referred to,.

Union of India v. S.T. & C. Co. A.I.R. 1969 S.C. 488. followed and applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1341 of 1969.

Appeal by special leave from the judgment and order dated December 2, 1968 of the Bombay High Court in Special Civil Application No. 2545 of 1968.

R. D. Hattangadi, S. P. Oka, S. V. Tambvekar and A. G. Ratnaparkhi, for the appellants.

F. S. Nariman, S. H. Bhojani and I. N. Shroff, for respondent No. 1.

R. R, Kapur, for respondents Nos, 2 to 5 The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, by defendants 5 to 7, is directed against the order dated December 2, 1968 of the Bombay High Court in Special Civil Application No. 2545 of 1968 filed by the appellants under Art. 227. The circumstances leading up to the filing by the appellants of the Special Civil Application in the High Court may be briefly mentioned.

Respondent No. 1, as plaintiff, instituted Rent Act Suit No. 784/6206 of 1963 in the Court of Small Causes at Bombay against Jayantilal Dayalal & Co., respondent No. 2 herein and its three partners, respondents 3 to 5 who were defendants 1 to 4. The appellants herein were impleaded as defendants 5 to 7. According to the plaintiff, respondents No. 2 to 5 were the owners of an open plot of land known as Jalaram Nagar, situate in Greater Bombay and were doing business of construction. The said defendants represented to the plaintiff that they were putting up a building in the said property according to the plans and specifications submitted to the Bombay Municipality. The plaintiff applied to the defendants to let to him, on the basis of a monthly tenancy, a portion of the building to be constructed as soon as the building was ready for occupation. Defendants 1 to 4 agreed to do so on the plaintiff advancing a sum of Rs. 12,500 as loan towards construction and on his executing a deed of charge, in accordance with the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act No. LVII of 1947) (hereinafter called the Act). The plaintiff agreed to those conditions and accordingly advanced a sum of Rs. 12,500 to defendants 1 to 4 on August 12, 1959 and the said defendants executed a deed of charge in favour of the plaintiff on the said date, which deed of charge was also registered with the Sub Registrar of Bombay on the same day. Defendants 1 to 4 started con- struction of the building in question and though it was completed they failed to let out the said premises to the plaintiff in spite of the provisions to that effect in the deed of charge of August 12, 1959. On the other hand, the said defendants let out the same to some third parties, contrary to and in breach of the provisions contained in the deed of charge. According to s. 18 of the Act, defendants 1 to 4 were bound and liable to complete the construction of the building within a period of 2 years from the date of the agreement and were also bound to let out the said premises to the plaintiff within the said period. As defendants 1 to 4 had failed to carry out the obligation cast on them by the Act, the plaintiff had become entitled to the return of the sum of Rs. 12,500 with interest at 4% per annum from August 12, 1959 till the date of payment. The deed of charge complies with all the requirements of s, 18 of the Act and under the said Act, the loan for-

construction of Rs. 12,500 together with interest.due is a charge on the entire building as well as on the entire interest of the said defendants in the land on which the building has been put up. The appellants, who are defendants 5 to 7 in the suit had purchased the property from defendants 1 to 4 and as the amount repayable to the plaintiff with interest is a charge on the property, those defendants are also bound and liable to pay the amount together with interest. As the disputes between the parties arose out of the provisions of the Act, the Court of Small Causes where the suit has been instituted has jurisdiction to try and entertain the suit. On these averments, the plaintiff prayed for a declaration that the sum of Rs. 12,500 given by him as construction loan shall be a charge on the loan as well as the buildings put up thereon and that the plaintiff is entitled to recover from the defendants the amounts mentioned in the plaint together with further interest and that in default the property be sold under the direction of the Court and that liberty be given to obtain a

personal decree against the defendants in case the full amount is not recovered by sale of properties. The plaintiff also asked for certain other consequential reliefs by way of injunction and appointment of receiver. Respondents 2 and 3 did not file any written statement, but respondents 4 and 5 contended that the Court of Small Causes has no jurisdiction to try the suit in view of the pecuniary value given in the plaint. They had also denied the receipt of the sum of Rs. 12,500. They further pleaded that the deed of charge referred to by the plaintiff had been executed only by respondent No. 3 in collusion with the plaintiff and that it is a sham and colourable document. They further contended that the plaintiff was not entitled to any reliefs by way of charge or for recovery of the amounts.

The appellants in their original written statement pleaded that there was no privily of contract between them and the plaintiff in respect of the suit claim. While admitting that they had purchased the property from defendants 1 to 4 on October 24, 1960 they pleaded that their vendors had already let out the property to various tenants and that they were not aware of any deed of charge having been executed in favour of the plaintiff. They further contended that the plaintiff as aware of these facts, and neverthe- less, he has filed the suit without any bona fides. Indian additional written statement filed by them, they raised the objection that the Court of Small Causes has no jurisdiction to entertain the suit. The plaintiff seeks a declaration of charge over the suit properties and such a declaration relating to immovable property cannot be granted by a Court of Small Causes, by virtue of s. 19 of the Presidency Small Causes Court Act. The various averments in the plaint and the reliefs asked for do not establish any cause of action arising under any of the provisions of the Act, as such. The reliefs asked for are on the basis of an agreement of charge stated to have been executed by defendants 1 to 4 and the cause of action is on the basis of such agreement and not under any provisions of the Act. The Court of Small Causes, Bombay, by its judgment dated March 23, 1968 overruled the objections raised on behalf of the defendants and decreed the suit as prayed. That Court found that the plaintiff had advanced as construction loan the sum of Rs. 12,500 and that the deed of charge, dated August 12, 1959 had been properly executed by defendants 1 to 4. The trial Court further held that defendants 5 to 7 who are the purchasers of the property from defendants 1 to 4 were also bound by the registered deed of charge, dated August 12, 1959. The Court further held that even assuming that defendants 1 to 4 did not disclose the transaction between them and the plaintiffs, defendants 5 to 7, as purchasers of the property over which a charge had been created by registered document, were bound by the said charge and their plea that they had go notice cannot be accepted. Regarding the objection raised by defendants 5 to 7 tot the jurisdiction of the Court to entertain the suit, the trial Court after finding that the deed of charge dated August 12, 1959 complies with all the requirements of S. 1 8 (3) of the Act held that the suit for recovery of the construction loan is cognizable under s. 28 of the Act, being a claim arising out of the provision of s. 18(3) of the Act. Finally, that Court granted a decree as against all the defendants.

The appellants challenged this decision by filing an appeal under S. 29 of the Act before the Full Court of Small Causes, being Appeal no. 400 of 1968. The Full Court agreed with all the findings and conclusions arrived at by the Trial Judge and by its judgment dated August 12, 1968 dismissed the appeal. The appellants challenged both the judgments by filing Special Civil Application No. 2545 of 1968 before the Bombay High Court under Art. 227. The learned Single Judge, by his order dated December 2, 1968 summarily rejected the same.

Mr. Hattangadi, learned counsel for the appellants, raised two contentions : (i) An application or a claim to be cognizable by the Special Court which had been conferred jurisdiction under S. 28 of the Act, must be a proceeding between a landlord and a tenant. In this case, that relationship does not exist between the parties and hence the Court of Small Causes had no jurisdiction to entertain the suit. (ii) The claim for a charge over the properties made 'by the plaintiff in the suit arises under a deed of contract evidenced by the charge dated August 12, 1959 and hence the proceedings initiated by the plaintiff before the Court of Small Causes cannot be considered to relate to "any claim or question arising out of this Act or any of its provisions" and therefore the Court of Small Causes has no jurisdiction under s. 28 to entertain and deal with the proceedings.

Mr. Nariman, learned counsel for the plaintiff-first respondent, on the other hand, pointed out that there is intrinsic evidence in the Act itself to show that it is not necessary that every proceeding contemplated under s. 28 of the Act should be between a landlord and a tenant. Counsel also urged that a claim for enforcing a charge in respect of a construction loan advanced by a party and for the recovery thereof arises out of the provisions of the Act because without such provisions such a claim could never have been made and the transaction on which the claim is based could never have been entered into. Mr. Nariman further referred us to s. 1 8 (1) of the Act which prohibits a landlord or any person acting on his behalf from receiving the various kinds of amounts mentioned therein, but permits, under s. 18 (3) the type of arrangement evidenced by the deed of charge dated August 12, 1959. The reliefs asked for 'by his client in the suit, counsel pointed out, relate to claims arising out of the Act viz., s. 18(3) and therefore the Court of Small Causes was the proper Court under s. 28 where such proceedings could be initiated.

Both the counsel have referred us to certain decisions in respect of the two aspects referred to above which will be adverted to later.

In support of his first contention, Mr. Hattangadi drew our attention to the absence of any reference to a 'tenant' in s. 18 (3) of the Act. In this case, according to the counsel, the relationship between the parties can only be that of a debtor and a creditor and not that of a landlord and tenant. Proceeding further the counsel urged that under s. 28 the parties must be in the relationship of landlord and tenant. That relationship not existing in this case, the jurisdiction conferred on a Court of Small Causes, under s. 28, cannot be invoked.

It is now necessary to refer to certain provisions of the statute which will have a bearing on the question as to whether the relationship of landlord and tenant should exist to invoke the jurisdiction of the Court of Small Causes under s. 28 as also on the question as to whether the claim made by the plaintiff in the suit is a claim arising out of the Act.

Section 5 defines the various expressions. Clauses (3) and (11 of s. 5 define the expressions 'landlord' and 'tenant'. Particularly, sub-cl. (c) of cl. 11 takes in even any member of the tenant's family residing with him at the time of or within three months immediately preceding his death as may be decided in default of agreement by the Court. Sub-s. (2) of S. 18 gives a right to "any person", who has paid one or other of the types of amounts mentioned therein, to recover from the landlord those amounts. That sub-section again gives a right to a tenant who may have paid any of those amounts

to deduct such amounts from the rent payable by him to a landlord. "Any person", mentioned in sub-s. (2) of S. 18, will not have the relationship of a tenant to the landlord from whom he seeks to recover the amount. Nevertheless, he can certainly seek to recover the amount as a claim arising out of the Act in a Court of Small Causes, under S. 28. Sub-s. (3) of s. 18 which permits a payment being made to a landlord for the purpose mentioned therein, refers to "any payment made under any agreement by any person to a landlord by way of a loan". If such person seeks to recover back the construction loan provided the relief can be considered to be a claim arising out of the Act which question will be dealt with by us later-he can approach the Court of Small Causes under S. 28. The two other material provisions which require to be noted are S. 18(3) and S. 28(1) of the Act, which are set out below :

> "18(3). Nothing in this section shall apply to any payment made under any agreement entered into before the first day of September 1940 or to any payment made by any person to a landlord by way of a, for the purpose of financing the erection of the whole or part of a residential building or a residential section of a building on the land held by him as an owner, a lessee or in any other capacity, entitling him to build on such land, under an agreement which shall be in writing and shall, notwithstanding anything contained in the Indian Registration Act, 1908, be registered. Such agreement shall inter alia include the following conditions, namely
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> (i) that the landlord is to let to such person the whole or part of the building when completed for the use of such person or any member of his family;
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> (ii) that the rate of interest on such loan shall not be less than four per cent, per annum;
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> (iii) that such loan shall be repayable by the landlord within a period of ten years from the date of the execution of the agreement or within a period of six months from the date of the termination of the tenancy by the, landlord, whichever period expires earlier;
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> (iv) that the amount of the loan shall be a charge on the entire building and the entire interest of the landlord in the land on which such building is erected Provided that if the loan has been advanced by more than one person, all such persons shall, Notwithstanding anything contained in any law for the time being in force, be entitled to a charge on the entire building and the entire interest of the landlord in such land rateably according to the amount of the loan advanced by each of such persons;
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> (v) that the landlord shall use the amount of the loan for the purpose of erecting the whole or part, as the case may be, of the residential building and for no other purpose; and

(vi) (a) that the erection of the building shall be completed within a period of two years from the date of the execution of the agreement or if the agreements executed are more than one, from the date of the execution of the first of such agreements :

Provided that the said period of two years may be extended to a further period not exceeding one year with the sanction of the Collector;

(b) that if the erection of the building is not completed within the period of two years or within the extended period specified in the proviso to clause (a), the loan shall be repayable forthwith to the person advancing the same with interest at the rate of four per cent per annum."

"28(1). Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, (a) in Greater Bombay, the Court of Small Causes, Bombay;

(aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction, in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2) no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

Having due regard to, the aspects mentioned above and the provisions of ss. 18(3) and 28(1), in our opinion it is not necessary that there should be a relationship of landlord and tenant in respect of all the matters covered by s. 2 8 (1) of the Act, so as to give jurisdiction to the Court of Small Causes. No doubt, one type of action contemplated under that section, viz., a suit or proceeding for recovery of rent or' possession of any premises to which any of the provisions of Part 11 apply may be between a landlord and a tenant; but in' respect of the other matters dealt with in that sub-section, it is not necessary that the relationship of landlord and tenant should exist between the parties before the Court.

Mr. Hattangadi referred us to certain decisions which, according to him, will support his contention that the essential requisite to attract s. 28 is the relationship of landlord and tenant. He referred us to the decision of Chagla, C.J., in Shivaling Gangadhar v. Navnitlal Amritlal(l). That was a suit by a landlord against his tenant in the City Civil Court complaining that the tenant had used the

residential premises let to him as business premises by installing cutting and ruling machines. The landlord prayed for damages as also for a' mandatory injunction for removal of the machines. The trial Court granted to the plaintiff the reliefs asked for by him. On appeal by the tenant, the Assistant Judge, Poona, held that the City Civil Court had no jurisdiction to try the suit as the claim fell under the Act and therefore the Special Court set up under s. 28 alone could entertain the suit. In this view the Assistant Judge directed the return of the plaint to the proper Court. In the revision filed by the landlord before the High Court, the learned Chief Justice held that the claim or question in the suit instituted by the plaintiff related to the liability of the tenant for damages and for an injunction and that such a claim could never arise out of the Act and therefore the City Civil Court had jurisdiction to entertain the suit. The question as to whether under s. 28 it is necessary that the relationship between the parties to the proceeding should-be, that of a landlord and tenant did not arise for consideration at all in the decision dealt with above. Admittedly the suit was by a landlord against his tenant, and the Only question was regarding the jurisdiction of the Civil Court to entertain the suit, as instituted by the landlord.

(1) I.L.R. [1958] Bom. 890.

The next decision referred to by Mr. Hattangadi is Bishan v. Maharashtra W. & G. Co.(1) That, again, was a suit by certain tenants in the City Civil Court against their landlords for an injunction restraining the latter from causing obstruction to a passage leading to the shops occupied by the tenants. The landlords contended that the suit being essentially between the landlords and tenants for recovery of possession of the premises let out to the tenants, it related to claims or questions arising out of the Act. On this basis they contended that the Court of Small Causes, Greater Bombay, was exclusively entitled to entertain and try the suit under s. 28 of the Act and the City Civil Court had no jurisdiction. The Trial Court over- ruled the objection of the landlords and held that it had jurisdiction to try the suit as it did not fall under s. 28 of the Act, and as it did not relate to any claim or question arising out of the Act, as contemplated by that section. When the matter came up before the High Court in revision, at the instance of the landlords, the learned Judge, after referring to the relevant part of s. 28 of the Act, states at p. 231 as follows :

> "It is manifest that the following conditions must be satisfied in order that a suit or proceeding should be triable by the Courts of exclusive jurisdiction mentioned in cls. (a), (aa) and (b) of sub-s. (1) of s. 28 (1) The suit or proceeding must be between a land-

lord and tenant. Unless this condition is satisfied, s. 28 can have no application. If this condition is satisfied, it is further necessary that either (2) the suit or proceeding must relate to the recovery of (i) rent or (ii) possession of premises to which the provisions of Part II of the Act apply, or (3) Some application must have been made under the Act, or the suit or proceeding must involve a claim or question arising out of the Act or out of any of its provisions.

If in addition to the first condition either of the two other conditions is satisfied, the suit would lie in the Court of exclusive jurisdiction."

Having stated as above, the learned Judge held that the first condition in, that case was satisfied because the suit was between landlords and tenants. The third condition, mentioned in the above extract, did not further arise for consideration and the learned Judge discussed the second contention mentioned above. That (1) (1967) B.L.R. 229.

discussion is not really necessary. The learned Judge ultimately held that the City Civil Court had jurisdiction to entertain the suit.

Mr. Hattangadi quite naturally placed considerable reliance on the statement of the learned Judge, extracted above, particularly to condition no. 1 which, according to the learned Judge must be satisfied to attract s. 28. We are not inclined to agree with the reasoning of the learned Judge regarding the first condition extracted above, viz., that the suit or proceeding must in all cases be between the landlord and the tenant and unless that condition is satisfied, s. 28 could have no application. We have already indicated that one type of action contemplated under s. 28 is a suit or proceeding relating to the recovery of rent or possession of any premises as between a landlord and tenant. But there are various other matters dealt with in s. 28(1) in respect of which also the Special Court referred to therein has been given jurisdiction. For instance, a claim or question arising out of the Act or any of its provisions need not necessarily be one between a landlord and a tenant, but nevertheless the Special Court will have jurisdiction to deal with such a claim or question under s. 28(1). Another decision to which our attention was drawn is that of a Division Bench of the Bombay High Court in Bombay Grain Dealers v. Lakhmichand(l). In that decision a tenant of a terrace filed a suit in the City Civil Court against his landlord alleging that the latter had prevented him from entering into and occupying the terrace for the purpose of his business. The tenant asked for a declaration that he was entitled to possession and occupation of the terrace and also for an injunction restraining the above landlord from obstructing him in the enjoyment of the terrace. Having due regard to the nature of the suit therein which was treated as one for possession of the terrace from the landlord, it was held that the claim fell within s. 28 and therefore the City Civil Court had no jurisdiction to entertain the suit. Referring to S. 28 the learned Judges said, at p. 192 :

> "It commences with the words "Notwithstanding anything contained in any law" and it purports to vest special jurisdiction in Courts named in cls. (a) and (b) of sub-s. (1) in respect of matters enumerated by it. It gives jurisdiction to these Courts (1) to entertain
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> (a) any suit or (b) proceeding, between a landlord and a tenant, (2) relating to the recovery of rent or possession of any premises to which the provisions apply, (3) to decide any application made under this Act and (4) to (1) (1967) 71 Bom. L.R. 179.

deal with (a) any claim or (b) question arising out of the Act or any of its provisions. There is a further clause which excludes the jurisdiction of any other Court in respect of any such (a) suit, (2) proceeding, (3) application or (4) deal with such claim or question."

The observations extracted above, in our opinion, do not support the contention of the learned counsel that in all proceedings under s. 28 parties must be arranged on opposite sides as landlord

and tenant. In fact, the above decision had no occasion to consider any such question because, admittedly, the parties therein were landlords and tenants. We may also refer to a decision of this Court in Importers and Manufacturers Ltd. v. Pheroze Farmrose Taraporewale(l). The landlord in that case had instituted the suit in the Court of Small Causes, Bombay, against his tenant and the sub-tenant for recovery of possession of the premises and also for compensation. According to the landlord the tenant had sub-let the premises without his previous consent and contrary to the terms of the tenancy. The trial Court granted a decree in favour of the plaintiff. The defendants filed an appeal under s. 29 of the Act and before the appel- late Court they raised an additional plea that the Court of Small Causes had no jurisdiction to entertain the suit in so far as it related to the second defendant, the sub-lessee. The Appellate Bench of the Small Causes Court dismissed the appeal. The sublessee moved the High Court unsuccessfully in revision under s. 115 C.P.C. He came up to this Court by special leave and the only contention raised was that the Small Causes Court had no jurisdiction to entertain the suit under s. 28 of the Act. The contention of the sub-lessee was that his sub-lease has not been recognized by the landlord and there was no relationship of landlord and tenant between him and the plaintiff and therefore the Small Causes Court had no jurisdiction to entertain the suit. After holding that so far as the plaintiff and the first defendant (the tenant) were concerned, the suit being between a landlord and tenant, the only Court competent to entertain the suit under s. 28 was the Court of Small Causes, this Court observed, at p. 230 "Section 28 confers jurisdiction on the Court of Small Causes not only to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises but also "to deal with any claim or question arising out of this Act or any of its provisions". There is no reason to hold that "any claim or question"

> must necessarily be one between the landlord and the tenant. In any case, once (1) [1953] S.C.R. 226.

there is a suit between a landlord and a tenant relating to the recovery of rent or possession of the premises the Small Causes Court acquires the jurisdiction not only to entertain that suit but also "to deal with any claim or question arising out of the Act or any of its provisions" which may properly be raised in such a suit."

In the above extract, this Court, in our opinion, has clearly laid down that when the Court of Small Causes under S. 28 of the Act is invited "to deal with any claim or question arising out of this Act or any of its provisions"

> the relationship between the parties to such proceedings need' not be that of a landlord and a tenant. Mr. Hattangadi no doubt stressed the latter part of the observations in the above extract wherein, according to him, this Court has emphasised that in that particular case the suit was between the landlord-plaintiff and the first- defendant tenant and, in consequence, held that the Small Causes Court had jurisdiction. In our opinion this is not a proper understanding of the principle enunciated by this Court. This Court has categorically held that the claim or question which the Small Causes Court is called upon to consider need not necessarily be between a landlord and a tenant. After having so held, this Court gave only an

additional reason for upholding he jurisdiction of the Small Causes Court on the ground that the suit was between the landlord and the first defendant who was admittedly a tenant.

Having due regard to the aspects discussed above, the first contention of Mr. Hattangadi cannot be accepted. The second contention of Mr. Hattangadi, as noted earlier, is that the subject matter of the suit in question does not relate to " any claim or question arising out of this Act or any of its provisions" so as to give jurisdiction to the Special Court under s. 28 of the Act. That is, according to the counsel, the reliefs asked for by way of a charge on the properties as well as for recovery of the amount advanced by the plaintiff are founded on the deed of charge dated August 12, 1959. The argument is that the rights of the plaintiff sought to be enforced in the suit flow out of the contract or are based upon the agreement dated August 12, 1959 and there is no claim or question arising out of the Act or any of its provisions which require consideration by the Special Court. He further urged that it may be that parties may enter into the arrangement embodying the various conditions mentioned in S. 18(3), but that does not mean that the claim, when relief is sought at the hands of a Court, can be considered to arise out of the provisions of the Act or any of its provisions.

Mr. Nariman learned counsel for the plaintiff-first respondent, as already noted, controverts this proposition advanced on behalf of the appellant. Mr. Nariman pressed before us that the deed of charge dated August 12, 1959 is one permitted by s. 18(3) provided it satisfies the requirements mentioned in that subsection. He further pointed out that any relief asked for by the plaintiff, though it may be according to the terms of the deed of charge, is really the enforcement of a claim arising out of the Act. In such matters, counsel urged that s. 28(1) not only specifically confers jurisdiction on the Special Court but it also categorically denies jurisdiction of any other Court to entertain any such proceeding. Mr. Nariman has also referred us to certain decisions bearing on the interpretation of the expression "arising out of" to which we will presently refer. Before we refer to those decisions, it is necessary to advert to the salient features of the deed of charge dated August 12, 1959. The agreement is dated August 12, 1959 and it has been duly registered on the same day, under the provisions of the Indian Registration Act. That agreement is entered into between the first respondent herein, described as the tenant, and respondents 2 to 5, described as the landlords. After stating that the landlords are the owners of the land known as Jalaram Nagar and that the landlords propose to construct the building on the said land according to the plans submitted to the Bombay Municipality, the agreement states that the tenant applied to the landlords to let out to him on the basis of monthly tenancy, the accommodation specified therein, on its being ready for occupation. The landlords having agreed to grant to the tenant and the tenant having agreed to take from the landlords a tenancy of the premises in the building which was being constructed, at a monthly rental of Rs. 200, is recited. The document further proceeds to state that the landlords have called upon the tenant to pay the amount of construction loan of Rs. 12,500 and the tenant having accordingly paid the said

amount, the receipt of which was acknowledged and admitted by the landlords. It is specifically stated that the loan was paid as construction loan towards the construction of the building in respect of a portion of which was agreed to be rented to the tenant and the amount of the loan to be utilised by the landlords for the construction of the building. The interest on the said loan is mentioned as 4% per annum and the same is to be adjusted in the manner mentioned in the agreement. The agreement further provides that on completion of the building, the tenant, on being duly intimated by the landlord, is to take possession of the premises agreed to be rented to him and the tenant shall become liable to pay to the landlords the rent 'according to the further recitals in the document. There is a stipulation' for payment by the tenant to the landlord of a monthly rent of Rs. 200. The landlords undertake to repay to the tenant the construction loan of Rs. 12,500 within a period of five years and two and a half months from the date of the agreement and the landlords are to pay in the meanwhile interest at 4% per annum in two six-monthly instalments.

Clause 7 recites that the amount of the loan shall be a charge on the entire building and the entire interest of the landlords in the land on which the building is constructed in common with other tenants from whom similar loans have been taken by the landlords and rateably according to the amounts of loan advanced by each of such tenants. Till the loan is repaid by the landlords, the tenant is declared entitled to deduct a sum equivalent to the monthly rent of Rs. 200 payable by the tenant and the amount so deducted ought to be adjusted towards the interest accruing due. The agreement is to be registered under the Indian Registration Act. It is further provided that after the loan has been repaid in full to the tenant, the latter shall continue to keep the premises as a monthly tenant. As we have mentioned earlier, the agreement has been duly registered under the Indian Registration Act, on the same day. A perusal of the various clauses of the agreement, referred to above, clearly shows that the loan given by the first respondent to respondents 2 to 5 was for the purpose of financing the erection of the building on the land in question held by the landlords as owners and that the agreement was in writing and has been registered. It also includes the various conditions referred to in s. 1 8 (3). Therefore it is clear that the arrangement by way of an advance of the construction loan and the conditions imposed therein and the manner in which the deed of charge has been executed are in accordance with s. 18(3) of the Act and the arrangement is a permissible one under the said sub-section. But for the type of arrangement entered into in accordance with s. 18 (3), it is clear that any other payment of the types of amounts mentioned in It is only just necessary to advert to one or two aspects referred to in the plaint, the contents of which have been already set out. In the plaint, the plaintiff refers to the loan advanced by him as a construction lo-an and in para 10 it is stated that the disputes between the parties "arise out of the provisions of Bombay Act LVII of 1947 at Bombay and hence this Hon'ble Court has jurisdiction to, try and entertain this suit". In paragraph 13 relating to the reliefs asked for, by cl. (a) the plaintiff seeks a declaration, that the sum of Rs. 12,500 shall be a charge on the property referred to therein, and in cl. (b) the plaintiff asks for relief on the basis of the declaration in the

> deed of charge that the plaintiff is entitled to recover the amounts mentioned in the. deed. The other reliefs are more or less incidental to the main reliefs contained in clauses (a) and (b). We have also referred to the fact that in the additional written statement filed by the respondents'

2 to 5 they raise the contention that a declaration of a charge in respect of immovable property cannot be granted by the Court of Small Causes and that no part of the reliefs contained in the plaint relate to any claim or question arising under the provisions of the Act and that on the other hand the suit is based upon the agreement dated August 12, 1959.

Having due regard to the nature of the transaction entered into between the parties, viz., the deed of charge dated August 12, 1959 and the provisions of s. 18(3) read with s. 28 of the Act, we are of opinion that the subject matter of the proceedings initiated by the plaintiff relates to claims or questions arising out of the Act. The question regarding the nature of the transaction, whether it is saved by s. 1 8 (3) of the Act, and the nature of the reliefs to be granted to the plaintiff are all claims or questions arising out of the Act and can be dealt with only by the Special Court constituted under s. 28 of the Act. No doubt the deed of charge furnishes the cause of action; but its legality, validity and binding nature and other incidental matters connected therewith are all questions arising out of the Act.

Further we are not inclined to accept the contention of Mr. Hattangadi that the rights of the plaintiff flows not from the Act or any of its provisions but from the contract, namely the deed of charge. The registered agreement entered into between the parties regarding the construction loan, it must be pointed out, is the method contemplated by s. 18 (3) of the Act. The payment made by the plaintiff under such an agreement is, in our view, an advance of a construction loan by the plaintiff in accordance with the Act and the relief for a charge as well as for the recovery of the amount are all claims arising out of the Act. In fact the claim made by the plaintiff in the suit could never have arisen and the transaction in question could not have taken place, but for the Act.

We will now refer to certain decisions placed before us by Mr. Nariman, learned counsel for the plaintiff-respondent. In Re Hawke, Ex-Parte Scott(1) the interpretation of the expression "not arising out of the bankruptcy" occurring in the proviso to s. 102(1) of the Bankruptcy Act, 1883 came up for consideration. The question arose in the following circumstances. A, a bankrupt, carried on business as a corn merchant at a place Y, where his stores were under the charge of a manager. On June 8, the appellants, under whom the bankrupt was very largely indebted for wheat then in the stores of the bankrupt, were informed that the bankrupt was in difficulties. Thereupon they arranged (1) L.R. 15 Q.B.D. 503.

with the manager to repurchase the wheat on credit, at a price exceeding pound 200 and the wheat was taken delivery of the next day. This sale by the manager was unknown to the bankrupt who, on the same date, sent notices of suspension which were delivered to the manager at Y and to the appellants on the next day. The bankrupt, on becoming aware of the transaction, wrote to the appellants repudiating the same and that as he had suspended payment it was unfair to his other creditors. The trustee-in-bank- ruptcy applied to the County Court Judge for an order that the

alleged purchase of wheat was void as against him and prayed for an order for return of the goods or their value. The County Court Judge held that the purchase was a fraud on the Bankruptcy Laws. On appeal by the purchasers, the latter contended that the County Court had no jurisdiction to hear the claim as "it did not arise out of the bankruptcy" and as such came within the proviso to the first clause of S. 102(1) of the Bankruptcy Act, 1883, which limited the jurisdiction given by the first part of the clause. On behalf of the Trustee it was contended that the claim would never have arisen but for the Bankruptcy Act. The proviso which came up for consideration before the Court was as follows "Sec. 102(1) :....

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceed- ing consent thereto, or the money, money's worth, or right in dispute does not, in the opinion of the judge exceed in value two hundred pounds."

In dealing with the proviso, particularly the expression "not arising out of the bankruptcy", occurring therein, and upholding the jurisdiction of the County Court Judge, the Court observed at p. 506 :

> "It seems to me that but for the impending bankruptcy the transaction would never have been impeached. The distinction, as I understand it, is this; suppose that before bankruptcy there had been a dispute between the bankrupt and A., then such a claim does not arise out of the bankruptcy, and the trustee has only the same claim as the bankrupt had; but I cannot conceive that this claim would have arisen out for the bankruptcy, and therefore I think it is a claim arising out of the bankruptcy."

In Thompson & Sons v. North Eastern Marine Engineering Company(1) the question arose as to whether a payment of compensation made by an employer to a workman on the basis of an agreement entered into under the Workmen's Compensation Act, 1897 was a payment under the agreement or under the said Act. Section 6 of the Workmen's Compensation Act wherein the words "if compensation be paid under this Act"

> occur, came up for interpretation and it was as follows "6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person."

The plaintiffs in that case, who were shipbuilders were engaged at the material time in repairing a steamship. The defendants, who were builders of marine engines were also at the same time and place, engaged in repairing the boilers of the steamship. One of the defendants' servants allowed a bag of coke to fall into the hold of the vessel and it struck and injured a workman A, employed by the

plaintiffs. A gave notice of the accident to the plaintiffs and claimed compensation from them. The plaintiffs agreed with A to pay him a particular sum per week as compensation under the Workmen's Compensation Act, 1897 and a memorandum of this agreement was sent to the Registrar of the County Court and duly recorded by him in accordance with the said Act. The plaintiffs sought to be indemnified by the defendants under s. 6 of the Workmen's Compensation Act. The defendants contended that the compensation paid by the plaintiffs to their workman under an agreement is not compensation paid under the Workmen's Compensation Act and that s. 6 has no application. The Court posed the question arising for consideration as follows :

> "The question on which I reserved my opinion is whether or not what has been paid to the injured man, and also the sums which the plaintiffs are still liable to pay to him under the agreement, are sums which fall under the head "Compensation paid under this Act"

within the meaning of s. 6, so that the plaintiffs are entitled to an indemnity from the defendants.

(1) L.R. [1903] 1 K.B.D. 428.

Dealing with the interpretation to be placed upon the words in question, the Court observed, at p. 435 :

> "But the decisive words in this case are, as it seems to me, "if compensation be paid under this Act," in the latter part of the section. Now, is such a payment as has been made here under the agreement within those words ? I think that I must hold that it is. If it is not paid under the Act, why and how is it paid ? It is clearly part of the scheme of the Act that the parties may agree, and agreement is one of the modes of settlement clearly part of the scheme of the Act that the parties may section says that the employer is entitled to be indemnified."

The Court concluded the discussion at p. 438 thus "and I feel bound to hold that an agreement to pay compensation being one of the methods contemplated by the Act, payment under such an agreement is payment of compensation under the Act, and the plaintiffs' right to indemnity from the defendants follows."

Whether certain claims were "arising out of"

> or "under a contract" came up for consideration in Government of Gibralter v. Kenney(1). The parties in that case had entered into an agreement which, under clause nine, provided as follows "It any dispute or difference shall arise or occur between the parties hereto in relation to any thing or matter arising out of or under this agreement the same shall be referred to some person nominated as single arbitrator by the President for the time being of the Chartered Surveyors' Institution and this agreement shall be deemed to be a reference to arbitration within the meaning of the Arbitration Acts, 1889 to 1934 or any statutory modification or

> reenactment thereof.,, Before the Arbitrator to whom the dispute was referred under this clause, the plaintiffs took objection that he had no jurisdiction to deal with certain claims as they did not arise out of or under the agreement or contract. The Court overruled the plaintiffs' objections holding :
>
> "In my view, this arbitration clause is very wide. It covers". any dispute or difference which shall arise or occur between the parties hereto in relation to any thing or matter arising out of or under this agreement." The distinction between matters "arising (1) L.R.[1956] 3 All. E.R. 22.

out of" and "under" the agreement is referred to in most of the speeches in Heyman v.

Darwins, Ltd. (1942 1 All. E.R. 337) and it is quite clear that "arising out of" is very much wider than "under" the agreement. This clause incorporates a difference or dispute in relation to any thing or matter "arising out of" as well as "under" the agreement, and, in my view, everything which is claimed here in this arbitration can be said to be a dispute or difference in relation to something "

> arising out of" the agreement".

The question, as to whether a particular dispute was one "arising out of the contract"

> came up for consideration before this Court in Union of India v. S.T. & C. Co. (1). The material part of cl. 21 of the arbitration agreement in that case was as follows :
>
> " in the event of any question or dispute arising under these conditions or any special conditions of contract or in connection with this contract (except as to any matters the decision of which is specially provided for by these conditions) the same shall be referred to the award of an arbitrator. . . ."

In construing this clause and in dealing with the question, this Court observed at p. 491 as follows':

> "In our opinion, the claim made by the respondent firm was a claim arising out of the contract. The test for determining the question is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the Respondent firm is justified or otherwise. It it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute, it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide this case."

In view of the discussion contained in the above decisions and the reasons given by us earlier, it follows that the reliefs asked for by the plaintiff in the suit "and the controversy raised by the defendants regarding the plaintiff's right to obtain those reliefs, all relate to "claims or questions arising out of this Act or any of its provisions", and therefore, the Court having jurisdiction is the Special Court under s. 28 of the Act. The mere fact that the parties had entered into an agreement by

way of a deed of charge, does not affect the question because, as already stated, the Act permits the advancing of a loan for the purpose of financing the (1) A.I.R. 1969 S.C. 488.

erection of the whole or part of a building under an agreement entered into in accordance with S. 18(3) and any claim or questions raised, though with reference to the agreement, are really "claims or questions arising out of this Act or any of its provisions". The findings on facts, recorded by the Court of Small Causes and by the Appellate Court, have not been challenged before us. It follows that the second contention also fails. In the result the appeal fails and is dismissed with costs of the plaintiff-first respondent.

G.C. Appeal dismissed.
L5Sup.CI/70-24-12-70-GIPF.