

## **Mansukhlal Dhanraj Jain And Ors. Etc vs Eknath Vithal Ogale Etc on 8 February, 1995**

**Equivalent citations: AIR 1995 SUPREME COURT 1102, 1995 (2) SCC 665, 1995 AIR SCW 1127, (1995) 1 APLJ 65(1), (1995) 3 CIVLJ 265, 1995 HRR 351, 1995 SCFBRC 444, (1995) 1 SCR 996 (SC), 1995 BOMRC 122, 1996 BOMCJ 1 169, (1995) 8 JT 293 (SC), (1995) 3 BOM CR 240**

**Bench: S. Mohan, S.B. Majmudar**

CASE NO. :

Appeal (civil) 4913 of 1989

PETITIONER:

MANSUKHLAL DHANRAJ JAIN AND ORS. ETC.

RESPONDENT:

EKNATH VITHAL OGALE ETC.

DATE OF JUDGMENT: 08/02/1995

BENCH:

S. MOHAN & S.B. MAJMUDAR

JUDGMENT:

JUDGMENT 1995 (1) SCR 996 The Judgment of the Court was delivered by MAJMUDAR, J. In both the civil appeals the first one arising pursuant to the certificate of fitness granted under Article 133 of the Constitution by the High Court of Bombay and the other one arising out of special leave to appeal granted by this Court under Article 136 of the Constitution of India against another decision of the same High Court, a short question arises for our consideration. It is as under :

"Whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor, who is said to be threatening to disturb the possession of the plaintiff licensee, without following due procedure of law, is cognizable by the court of small causes Bombay as per Section 41(1) of the Presidency Small Causes Courts Act (hereinafter referred to as "the Small Causes Courts Act") , 1882 or whether it is cognizable by the City Civil Court, Bombay, constituted under the Bombay City Civil Act."

The High Court by the impugned judgment in these appeals has taken the view that such a suit is not maintainable before the City Civil Court and should be filed in the Small Causes Court, Bombay, under Section 41(1) of the Small Causes Courts Act. The learned Counsel for the appellants contended before us that the said view is not correct. Learned counsel for the respondents on the other hand has supported the same view.

Before we consider the aforesaid question, a few relevant facts leading to both these appeal deserve to be noted at the outset.

**FACTS IN C.A. NO. 4913 OF 1989** The appellant-plaintiffs filed suit No. 1290 of 1984 in the Bombay City Civil Court against the respondent-defendant for permanent injunction on the ground that the appellants are in possession of the suit shop. That the respondent-defendant is tenant of the suit premises being Shop No. 4, Meghji Vallabhdas Trust Building, Bhavanishankar Road, Dadar, Bombay. That the defendant took the same premises in December, 1974 on rent and put the appellants into possession thereof under an irrevocable licence/tenancy agreement. It was agreed that Plaintiff No. 1 had to pay licence fee to the defendant or to the landlord. The plaintiff further averred that due to some difference of opinion between the parties, the defendant started threatening the appellants that he would physically throw them out of the suit premises and hence the suit for permanent injunction restraining the respondent-licensor from disturbing the possession of the plaintiff- licensees of the suit premises.

We are not concerned with the defence of the respondent on merits for resolving the present controversy about the jurisdiction of the City Civil Court to entertain such a suit. Jurisdiction of the Court has to be decided at this stage on the averments in the plaint on demurrer, taking them to be true.

The appellants moved an application for temporary injunction pending the suit. While opposing the said application, the respondent contended that the City Civil Court has no jurisdiction to entertain the suit and it was only the Small Causes Court, Bombay, which could entertain such a suit. This contention was examined by the City Civil Court as a preliminary issue. After hearing both the sides, learned Judge of the City Civil Court came to the conclusion that the Court had jurisdiction to entertain such a suit for injunction and thereafter directed that the injunction application should be heard on merits.

The said order of City Civil Court was challenged by the respondent by filing Civil Revision Application No. 212 of 1985 in the High Court. The learned Chief Justice (Madhava Reddy, CJ) who heard the revision in the first instance thought it fit to refer the matter to a Division Bench, looking to the importance of the question involved. The revision application there-after was placed before a Division Bench consisting of P.B. Swant, J. (as he then was) and G.H. Guttal, J. Sawant, J. took the view that the City Civil Court had jurisdiction to entertain such a suit, but Guttal, J. took a contrary view and held that such a suit could lie only under Section 41 (1) of the Small Courts Act before the Small Causes Court, Bombay. In view of the difference of opinion between the two learned Judges constituting the Division Bench, the matter was referred to a third learned Judge Pendse, J. Pendse, J. after hearing the parties came to the conclusion that the City Civil Court had no jurisdiction to entertain the suit. He agreed with the view taken by Guttal, J. Thereafter the matter was placed before the Division Bench for final orders and in the light of the decision reached by Guttal, J. and Pendse, J., the revision application was allowed and it was held that the City Civil Court had no jurisdiction to entertain the suit. On an application by the appellants for certificate under Article 133(1), the Division Bench granted the certificate as prayed for and that is how this civil appeal has been filed in this Court and has reached hearing before us.

FACTS IN C.A. NO, 4753 OF 1989 :

The appellant-plaintiff filed Suit No. 7508 of 1984 in the City Civil Court at Bombay against the respondents for permanent injunction restraining the respondent-defendants, their servants and agents from dis-possessing the appellant-plaintiff from the suit premises being 505-A, Neel Kanth, 98, Marine Drive, Bombay, save and except by due process of law. A further injunction was also sought, restraining the respondents from in any manner obstructing or interfering with the possession of the plaintiff in respect of the aforesaid suit premises save and except by due process of law. The case of the plaintiff was that it was a firm which started its business as shroffs & financiers in the suit premises. That premises which originally belonging to S. Mathuradas were purchased by Respondents Nos. 1 & 2 who are also dealing as the Shroffs and financiers. On behalf of Respondents Nos. 1 & 2, Respondent No. 3 used to accept monthly compensation which used to be paid by cheque. That the plaintiff had been paying monthly compensation to Respondent No. 3 who had been accepting the same till 1982. The case of the plaintiff was that the premises were given to the plaintiff-firm by way of licence by Defendant No. 3 and as the plaintiff apprehended that the defendants were likely to oust the plaintiff from the suit premises without following due process of law, he filed the aforesaid suit for the above stated reliefs.

In the said suit, by notice of motion the appellant-plaintiff prayed for interim relief against the respondents. That notice of motion was dismissed by the Trial Court on merits after hearing the contesting parties. The appellant-plaintiff thereafter filed an appeal from Order No, 598 of 1986 before the Bombay High Court. In that appeal, the learned Single Judge S.M. Daud, J., took the view that City Civil Court has no jurisdiction to entertain the suit. For reaching that conclusion the learned Judge placed reliance on the decision of the High Court in Civil Revision Application No. 212 of 1985 which is the subject-matter of companion appeal before us. As noted earlier, the appellant obtained leave to appeal under Article 136 of the Constitution and has filed this appeal.

As both the appeals raised common question for consideration, learned counsel for the contesting parties were heard in common on this question and accordingly we are disposing of these appeals by this judgment.

In order to resolve the controversy posed for our consideration, it will be appropriate to note the relevant statutory provision having a direct bearing on this question. Section 41(1) of the Small Causes Courts Act reads as under :

"41(1). Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of Sub- section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of

possession of any immovable property situated in Greater Bombay, or relating to the recovery of the license fee or charges of rent thereof, irrespective of the value of the subject matter of such suits or proceedings."

A mere look at the aforesaid provision makes it clear that because of the non-obstante clause contained in the section, even if a suit may otherwise lie before any other court, if such a suit falls within the sweep of Section 41(1) it can be entertained only by the Court of Small Causes. In the present proceedings we are not concerned with the provisions of sub-section (2) of Section 41(1) and hence we do not refer to them. For applicability of Section 41(1) of the Small Causes Courts Act, the following conditions must be satisfied before taking view that jurisdiction of regular competent civil court like City Civil Court is ousted.

- (i) it must be a suit or proceeding between the licensee and licensor; or
- (ii) between a landlord and a tenant;
- (iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
- (iv) relating to the recovery of the licence fee or charges or rent thereof.

In the present case, we are not concerned with the 2nd and 4th conditions, as the only contention of the appellants is that the present suits do not satisfy conditions nos. 1 and 3 for attracting Section 41(1). The respondents claim to the contrary. It is obvious that if the present suits satisfy conditions nos. 1 and 3 they would clearly attract the applicability of Section 41(1) of the Act and such suits would be outside the purview of regular civil court like the City Civil Court. Therefore, the enquiry which becomes relevant at this stage is to find out from the averments in the plaints whether these are suits between a licensor and a licensee and whether they relate to the recovery of possession of immovable property situated in Greater Bombay.

So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensor. The first condition is clearly satisfied. Then remains the question whether the third condition, namely that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not, It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal threatened acts of respondents-defendants. Relying on a series of decision of this Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud, J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section in our view it cannot be said that these suits are not relating to the possession of the

immovable property. It is pertinent to note that Section 41(1) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to"

are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1). In this connection, we may refer to Blacks' Law Dictionary Super Deluxe 5th Edition. At page 1158 of the said Dictionary, the term "relate" is defined as under:

"to stand in some relation, to have bearing or concern, to pertain, refer, to bring into association with or connection with."

It cannot be seriously disputed that when a plaintiff-licensee seeks permanent injunction against the defendant-licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does have a bearing on or a concern with the recovery of possession of such property. In the case of Renusagar Power Company Ltd. v. General Electric Company & Anr., [1985] 1 S.C.R. 432, a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapurkar, J. at Page 471 of the report has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition No. 2 has been mentioned as under ;

"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

In Doypack Systems Pvt. Ltd. v. Union India & Ors., [1988] 2 S.C.C. 299, another Division Bench of this Court consisting of Sabyaschi Mukherji (as he then was) and G.L. Oza, JJ., had an occasion to consider this very question in connection with the provisions of Sections 3 and 4 of the Swadeshi Cotton Mills Co. Ltd. (Acquisition and Transfer of Undertaking) Act, 1986. Sabyaschi Mukherji, J. speaking for the Court, has made the following pertinent observations in paragraphs 49 and 50 of the report:

"The words "arising out of" have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. We are of the opinion that the words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word

"relate" , see Corpus Juris Secundum, Volume 17, Page 693.

The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Azeez, following and ap-proving Nitai Charan Bagchi v. Suresh Chandra Paul, Shyam Lal v. M. Shyamlal and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is Stated that the terms "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

It is, therefore, obvious that the phrase 'relating to recovery of possession' as found in Section 41(1) of the Small Causes Court Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee plaintiff would squarely be covered by the wide sweep of the said phrase, Consequently in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Causes Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits.

We may now refer to the relevant decisions of this Court and other Courts to which our attention was invited by learned counsel for both the sides. As some of the decisions referred to a pari materia provision as found in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"), it will be necessary to refer to the said provision. Section 28(1) of the Bombay Rent Act reads as under :

"28. Jurisdiction of courts. Notwithstanding anything contained in any law and notwithstanding that by reason for 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, 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 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."

When Section 41(1) of the Small Causes Courts Act is read in juxta position with the aforesaid Section 28 of the Bombay Rent Act, it becomes clear that pan materia words are used about nature of suits, in both these provision for conferring exclusive jurisdiction on Small Causes Court, namely, they alone can entertain such suits or proceedings relating to recovery of possession of premises. It is of course true that Section 41 of the Small Causes Courts Act deals with such suits between the licensee and licensor while Section 28 of the Bombay Rent Act deals with suits between landlord and tenant. But the nature of such suits as contemplated by both these sections is the same, namely, it should be the suit relating to the recovery of possession of premises. Interpreting the phrase 'relating to recovery of possession' as found in Section 28 of the Bombay Rent Act, a Bench of three learned Judges of this Court in the case of Babulal Bhummal and Anr. v. Nandram Shivram and Ors., [1959] S.C.R. 367, held that a suit for declaration that one of the plaintiffs was the tenant of the defendant landlord and the other plaintiffs were his sub-tenants and they were entitled to be protected from evidence squarely falls within the exclusive jurisdiction of the Small Causes Court, Bombay, under Section 28 of the Bombay Rent Act and jurisdiction of the City Civil Court for entertaining such a suit is excluded. Imam, J. Speaking for the three-Judge Bench in that case observed at page 374 of the report as under :

"The present suit filed in the City Civil Court raised in substance a claim to the effect that the plaintiffs were the tenants of the premises within the meaning of the Act. Such a claim was one which arose out of the Act or any of its provisions. The suit related to possession of the premises and the right of the landlord to evict any of the plaintiffs was denied on the ground that the first plaintiff was a tenant within the meaning of the Act and the premises had been lawfully sublet by him to the second and third plaintiffs. The City Civil Court was thus called upon to decide whether the first plaintiff was a tenant of the premises within the meaning of the Act and whether he had lawfully sublet the same to the second and third plaintiffs. The City Civil Court, therefore, had to determine whether the plaintiffs had established their claim to be in possession of the premises in accordance with the provisions of the Act."

The situation in the present case is almost parallel. The plaintiffs- licensees claim their right as licensees to protect possession of the suit premises from licensors by invoking the help of the Court. Such suits obviously would have to be styled as suits relating to recovery of possession, on a party of reasoning which appealed to the three-Judge Bench of this Court in Babulal's case (supra).

The same phraseology employed by section 28 of the Bombay Rent Act, namely, suits relating to recovery of possession' also came up for consideration before a latter-Judge Bench of this Court in the case of Natraj Studios v. Navrang Studios, [1981] 2 S.C.R. 466. In that case the facts were that there was a leave and licence agreement the parties. By virtue of section 15A of the Bombay Rent Act, a licensee in occupation on 1.2.1973 became a deemed tenant. The appellant-licensee filed a declaratory suit praying for a declaration that the plaintiff-appellant was a monthly tenant of the

two studios and all other structures and open land covered by the agreement. It was submitted by counsel for the appellant that the essence of the dispute between the parties was the right to possession of the two studios. This Court, speaking through Chinnappa Reddy, J., held at page 477 as follows :

"We may now proceed to consider the submission that the Court of Small Causes alone has exclusive jurisdiction to resolve the dispute between the parties. S.28(1) of the Bombay Rent Act, positively confers jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between landlord and tenant relating to the recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of license fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its proceedings, and negatively it excludes the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question:

After analysing the previous decisions of this Court in Babulal Bhuramal, Raizada Topandas etc., this Court held at page 483B as follows :

The relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed-demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties."

It was submitted by learned counsel for the respondents that in these two cases plaintiffs had prayed for declaration of their status. While in the present cases on such declaration is sought. In our view this will make no difference. Even in the present cases before getting interim injunction or perpetual injunction, plaintiff will have to show that he is a licensee on monetary consideration as claimed by him and the defendant is licensor and that he has threatened to illegally disturb his possession of the suit premises. It is the substance of the relief which matters and not its form.

In view of the aforesaid decisions of this Court, it must be held that the impugned judgments under appeal were rightly decided by the High Court and call for no interference in these appeals.

Before parting with these cases, we may mention that the Gujarat High Court in the case of Ambalal v. Narmada, (1963) 4 Gujarat Law Reporter p.90 has taken the view that a suit where plaintiff claims that he is entitled to possession and seeks a permanent injunction restraining the respondent-landlord for recovering possession, would fall under Section 28 of the Bombay Rent Act. The very same view was taken by a Division Bench of the Bombay High Court in the case of Ramkishore v. Vijaybahadursingh, A.I.R. (1964) Bom. 85. A full Bench of the Bombay High Court in the case of Dattatreya Krishna v. Jairam Ganesh, A.I.R. (1965) Bom. 177 which held that suits for injunction against defendant-landlords restraining them from forcibly evicting the plaintiff-tenants from possession of the suit premises would lie within the exclusive jurisdiction of the Small Causes Court,



Bombay as such suits will be suits relating to recovery of possession of premises. In our view the aforesaid decisions lay down correct law on the point. Swant, J. in the impugned judgment under appeal in Civil Appeal No. 4913 of 1989 was inclined to take a contrary view on the ground that the plaintiff had not prayed for a declaration about his licence and all that he was claiming was to protect his possession against threats of unlawful eviction and the Court had not to decide the status of the plaintiff. With respect, on the clear recitals and prayers in the plaint such a view is not sustainable. It is easy to visualise that before getting injunction whether temporary or permanent the plaintiff has to establish a legal right for the said relief, as seen earlier. Once the plaintiff contends that he is a licensee of the suit premises and the defendant is a licensor and on that basis he wants the assistance of the Court to protect his possession, it would be a suit between a licensee and licensor relating to the recovery of possession.

Analogy drawn by Sawant, J. from cases under Section 6 of the Specific Relief Act, 1963 on the clear averments in the plaints in present cases is also not apposite. It is trite to say that Section 6 of the Specific Relief Act given a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, without referring to the title of the plaintiff and defendant. It is purely a possessory suit wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit immovable property and he was illegally dispossessed within a period of six months prior to the date of the suit. Once the plaintiff proves this case, he becomes entitled to succeed and can get status quo ante and restoration of possession of the suit premises through the assistance of the Court. In given cases, even injunction suits purely based on previous peaceful possession and sub-sequent threatened dispossession may stand on an entirely different footing and might not attract the sweep of Section 41(1) of the Small Causes Courts or for that matter Section 28 of the Bombay Rent Act. But the present suits are not of that type. They are suits clearly based on the allegation that the plaintiffs are licensees on monetary considerations and they apprehend to be dispossessed, not in accordance with law, at the hands of defendant-licensors. Such suits as we have discussed earlier, clearly attract the applicability of Section 41 of the Small Causes Courts Act as both the conditions for its applicability, namely, that they are suits between licensees and licensors and they relate to recovery of possession of immovable properties situated in Greater Bombay are complied with. Consequently the conclusion is inevitable that the aforesaid suits as filed by the appellants were not cognizable by the City Civil Court, Bombay and they could be entertained only by the Small Causes Court, Bombay, and fall within the exclusive jurisdiction of the latter court.

As a result of this discussion, both these appeals fail. The City Civil Court is directed to return the plaints in both these cases to the respective appellants for being presented to proper Court of Small Causes, Bombay, if so advised. Appeals are accordingly dismissed subject to the aforesaid direction to the City Civil Court, Bombay. No order as to costs in both these appeals.