

# Jurisdiction of Rent Court in Tenant Disputes

**Case Name:** Santosh Motiram Pisat v. Sumitra Mohanlal Lain

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**Citation:** 2024:BHC-AS:42959

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**Act:** Maharashtra Rent Control Act, 1999.

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3750 OF 2024

Santosh Motiram Pisat

...*Petitioner*

V/s.

- 1) Smt. Sumitra Mohanlal Lain.
- 2) Mrs. Premlata Tapan Jain
- 3) Dileep Mohanlal Jain
- 4) Harshad Mohanlal Jain

...*Respondents*

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**Ms. Charitra Rao** with Mr. Arun Jadhav for the Petitioner.

**Mr. Rohit D. Joshi** for the Respondent.

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**CORAM : SANDEEP V. MARNE, J.**

**Dated : 22 October 2024.**

**JUDGMENT:**

1. **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for disposal.

2. The Petition involves the issue of jurisdiction of Rent Court to entertain a suit seeking composite prayers for recovery of possession of premises and for permanent injunction to restrain Defendant – tenant from using or occupying open space outside the suit premises. The Appellate Court has directed Plaintiff to elect the forum of Rent Court for claiming relief of recovery of possession of premises and to approach civil court for prayer of perpetual injunction. Plaintiff-landlord is aggrieved with the order passed by the Appellate Court

effectively ousting jurisdiction of Rent Court to try and entertain the prayer for perpetual injunction and has accordingly filed the present Petition.

3. The challenge arises out of judgment and order dated 27 October 2023 passed by the learned District Judge-3, Raigad-Alibag allowing Civil Revision Application No.1 of 2023 filed by Respondents-Defendants and setting aside order dated 16 November 2022 passed by 3<sup>rd</sup> Joint Civil Judge, Junior Division, Alibag. The Trial Court had rejected application filed by Defendants at Exhibit-35 seeking direction against Plaintiff to elect the forum of Rent Court for the purpose of prayer clause 15(a) of the Plaint, with liberty to approach Civil Court for relief sought in prayer clause 15(b) and to this extent, the Appellate Court has directed return of Plaint under Order VII Rule 10 of the CPC.

4. A brief reference to the facts of the case would be necessary for better understanding of the issue at hand. Plaintiff/Petitioner is the owner and landlord of structure named as 'Datta Prasad', situated at House No.618, Netaji Subhash Chowk, at Revdanda, Taluka –Alibag, District-Raigad. Defendant-late Mohanlal Babulal Jain was inducted as a tenant in respect of ground floor premises of Datta Prasad building, whereas Plaintiff resides on the first floor. Thus, ground floor of building 'Datta Prasad' forms **suit premises** in Civil Suit No.190 of 2013 filed by the Plaintiff in the Court of Civil Judge, Senior Division at Alibag for recovery of possession thereof. Plaintiff has pleaded that there is an open space or compound admeasuring 50 x 20 ft on the rear side of the suit premises, which belongs to him and that the said open space does not form part of the tenanted premises. However, the said open space is permitted to be used by the Defendant-tenant for

accessing toilet and bathroom located in the open space. Plaintiff has averred that the open space is for use by Plaintiff and family members. Plaintiff has sought recovery of possession of the suit premises on the grounds of unlawful subletting to tenant's brother Narendra Babulal Jain, as well as *bonafide* requirement of Plaintiff. Plaintiff has pleaded in the Plaint that Defendant had illegally put up tin shed covering the rear side open space and using and occupying the same. It is Plaintiff's case that since open space in the rear portion of the building does not form part of the tenanted premises, the Defendant-tenant cannot use or occupy the same. This is how in addition to the prayer for recovery of possession of the suit premises, Plaintiff has also prayed for order of injunction against Defendant from using and occupying the rear side open space and or from keeping any articles or things therein, except for accessing toilet facility. Plaintiff also sought injunction against the Defendant from using and or keeping any articles or things in the open passage from the entry of the building upto the staircase leading to the upper floor.

5. Plaintiff filed application for temporary injunction against the Defendant. Defendant appeared in the Suit and filed written statement as well as reply to the application for temporary injunction. It appears that application for temporary injunction was rejected by the Trial Court by order dated 20 November 2014. Plaintiff filed Civil Miscellaneous Appeal No.120 of 2014 in the Court of District Judge, Raigad, which was allowed by order dated 9 December 2015 and the Appellate Court granted injunction in favour of Plaintiff and against Defendant restraining him from using front side portion of the Datta Prasad building area in width of 3 ft. in front of shop for any purpose till disposal of the Suit. The Appellate Court further restrained the Defendant from using the area of land on rear side of Datta Prasad

building for any purpose except 3ft. space abutting the suit premises till disposal of the Suit. The Appellate Court made further clear that its order would not be construed to mean that the Defendant is allowed to keep any article in 3 ft. area in front of the staircase.

6. Defendant filed application dated 14 January 2016 seeking rejection of the Plaint under the provisions of Order VII Rule 11 of the Code, which came to be rejected by order dated 15 September 2016. Defendant thereafter filed application at Exhibit 35 on 21 December 2016 seeking return of Plaint under Order VII Rule 10 of the Code by seeking direction against Plaintiff to elect the forum of Rent Court for the purpose of prayer clause 15(a) relating to recovery of possession and to approach Civil Court for prayer clause 15(b) relating to permanent injunction. Return of Plaint *qua* prayer clause 15(b) was sought on the ground of the land, in respect of which the said prayer sought, is not governed by landlord-tenant relationship. Plaintiff resisted the application at Exhibit-35 by filing reply. The Trial Court proceeded to reject the application at Exhibit -35 by order dated 16 November 2022 by imposition of cost of Rs.2,000/- on the Defendant. The Defendant thereafter filed Civil Revision Application No.1 of 2023 in the Court of District Judge, Raigad challenging Trial Court's order dated 16 November 2022. The District Court has proceeded to allow the Revision Application filed by the Defendant-tenant and has set aside order dated 16 November 2022 passed by the Trial Court. Plaintiff has been directed to elect the forum of Rent Court for the purpose of prayer for recovery of possession of the suit premises with further direction to approach Civil Court for the purpose of prayer of perpetual injunction. Plaintiff is accordingly directed to file a Pursis before the Trial Court. Petitioner /Plaintiff has filed the present

Petition challenging order dated 27 October 2023 passed by the District Court.

7. Ms. Charitra Rao, the learned counsel appearing for Petitioner would submit that the District Court has erred in allowing the Revision Application filed by Defendant -tenant and directing Plaintiff to elect forum of Rent Court for prayer clause 15(a) and to approach Civil Court for prayer clause 15(b). She would submit that the Revision Application filed by Defendant was in fact not maintainable as the application filed at Exhibit-35 would not have terminated the proceedings before the Trial Court. Without prejudice, she would submit that the Rent Court has jurisdiction to decide even prayer clauses 15(b) and 15(c) seeking perpetual injunction as the same is sought by landlord against a tenant relating to tenanted premises. She would invite my attention to provisions of Section 33 of the Maharashtra Rent Control Act, 1999 (**MRC Act**) in support of her contention that the Rent Court has jurisdiction to decide every proceeding relating to recovery of possession of the tenanted premises. She would submit that the words used in Section 33 are 'relating to recovery' and not 'for recovery'. That therefore, it cannot be construed that the Rent Court has jurisdiction to entertain proceedings filed only for recovery of possession of the tenanted premises. She would submit that since prayer for seeking perpetual injunction against the Defendant from encroaching upon adjoining land is ultimately associated with and incidental to eviction proceedings, Plaintiff is entitled to seek even temporary injunction from Rent Court. Ms. Rao further submits that even otherwise Defendant-tenant is allowed access the toilet through the said open space and therefore, it cannot be contended that there is absolutely no connection between landlord and tenant *qua* the said open space. In support of her contention that

jurisdiction of Rent Court to decide prayer for injunction, Ms. Rao would rely upon judgment of Single Judge of this Court in ***R.J. Mehta, President Engineering Mazdoor Sabha and Anr. V/s. Govind Ramchandra Nadkari***<sup>1</sup> and of Division Bench in ***Mirabelle Hotel Company Private Ltd. Vs. Manu Subedar***<sup>2</sup>. Ms. Rao would accordingly pray for setting aside the order passed by the Appellate Court.

8. Petition is opposed by Mr. Rohit Joshi, the learned counsel appearing for the Respondents/ Defendants. He would submit that perusal of averments in the Plaint clearly indicate that the rear open space does not form part of the tenanted premises. That Rent Court does not have jurisdiction to grant any prayer in respect of the property, which does not form part of the tenanted premises. That Plaintiff is seeking perpetual injunction against Defendant-tenant in respect of rear open space by describing him as trespasser, which relief can only be sought before the Civil Court. He would submit that the Rent Court could not have been able to entertain the Suit for injunction simplicitor in respect of the land not forming part of the tenanted premises and that therefore such prayer for injunction cannot be sought before the Rent Court by mixing the same with prayer for recovery of possession. That the Rent Court inherently lacks jurisdiction to try and entertain any Suit for prayer in respect of the property, which is not part of the tenanted premises. He would submit that if prayer clause 15(a) is allowed, Plaintiff would be able to recover possession of the suit premises and, in that sense, prayers 15(b) and 15(c) would be rendered infructuous. On the contrary, according to Mr. Joshi, if prayer for recovery of possession is rejected and Defendant-tenant is permitted to retain possession of the

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<sup>1</sup>. 1990 Mah. R.C.J.-185

<sup>2</sup>. BLR Volume LXXII page 222



tenanted premises, it would be beyond the jurisdiction of Rent Court to decide the prayer for injunction in respect of land not forming part of the tenanted premises. Mr. Joshi would rely upon judgment of this Court in ***Shantabai Yashwant Kothare and Ors. V/s. Shankar Parshuram Naik since deceased represented through LRs. Prabhavait Shankar Naik and Ors.***<sup>3</sup> He would pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for my consideration.

10. The short issue this court is tasked upon to decide is about jurisdiction of Rent Court to entertain and decide Suit containing composite prayer for recovery of possession of tenanted premises and for perpetual injunction in respect of the land outside the tenanted premises. Plaintiff's Suit is premised on an averment that the rear side open space does not form part of the tenanted premises. In this connection it would be apposite to reproduce averments in paragraphs 3, 4 and 6 of the Plaint, which read thus:

3.The Plaintiff states that the suit premises is on the ground floor and it is admeasuring about 600 sq.ft. The Plaintiff states that the business is being carried out in front of portion of the said suit premises and in the rear portion is used for residential purpose. The plaintiff states that the said open space belongs to him being the landlord and the Defendant has no right, title and interest in the said open space in the back side of the building except the facility of the use of the toilet and bathroom therein, the open space which is commonly used by the Plaintiff and his family members also.

4. The Plaintiff states that the defendant has illegally and without obtaining the written permission of the plaintiff sublet or assigned or transferred the whole or part of the said tenanted premises to Shri. Narendra Babulal Jain, his brother. The Plaintiff states that the defendant is earning illegal profits by sub-letting the said suit premises. The Plaintiff states that it is admitted position that the

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<sup>3</sup>. 2006(5) Mh.L.J.



defendant is himself not using or occupying the suit premises and that the sub-tenant is in the use and occupation of the premises illegally. The Plaintiff states that he is thus entitled to the decree of possession under Sec. 16 (1) (e) of Maharashtra Rent Control Act and the defendant may be ordered to vacate the suit premises and hand over the vacant possession of the suit premises to the plaintiff.

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6.The Plaintiff states that the Defendant has illegal put up a patra shed covering in the rear side open compound of the said building. The Plaintiff states that the Defendant is using/ occupying the open space in tin rear side **beyond the tenanted premises**. The Plainu states that the Defendant cannot use the premise beyond what is let out to him. The Plaintiffs states that the Defendant has thus committed the breaches of the terms and the conditions of the tenancy. The Plaintiff states that the Defendant in thus liable to be evicted from the suit premises. The Plaintiff states that the Defendant be directed to remove the said patra shed/covering immediately.

*(emphasis and underlining added)*

11. Plaintiff has averred that the Defendant has illegally put up tin shed covering the rear side open space and has been using and occupying the same though the said open space, which is not let out to him. Plaintiff has accordingly sought prayer for injunction against Defendant on the basis of following averments in the paragraph 10 of the Plaint:

10. The Plaintiff states that the Defendant has no right in the open space/compound in the rear side of the suit premises “ Datta Prasad Building”. The Plaintiff states that the Defendant or his agents cannot use and occupy the rear side compound open space and keep his any articles or things in the said open space and or to put up a patra shed. The Plaintiff states that he is residing in the upper floor and he is required to go to upper floor through the passage from the entrance of the building to the first floor staircase. The Plaintiff states that the said passage is for the landlord only to go to upper floor. The Plaintiff states that the defendant is keeping some articles or things in the said open passage illegally and obstructing the entry of the Plaintiff and his family members to the upper floor. The Plaintiff states that the Defendant has no right to use and to keep articles in the said open passage. In the circumstances, the plaintiff prays that the

Defendant, his agents or servants, be restrained by the order and injunction of this Hon'ble Court from using and occupying the rear side open space compound of the suit premises except for the use of the toilet facility and or to keep any articles or things in the said rear portion of the compound and behind the suit premises as well as in the open passage leading to the upper floor. The Plaintiff states that the matter is urgent. The Plaintiff states that if the order and injunction is not granted, he will suffer an irreparable loss which cannot be compensated in terms of money. The Plaintiff & prays that the ad-interim and interim reliefs in the matter.

12. On the above broad pleadings, Plaintiff has sought following prayers in the Suit:

- (a) A Decree of Possession of the suit premises be passed against the Defendant and the defendant be directed to quit, and vacate the suit premises and to handover the quiet and peaceful possession of the suit premises i.e. the 'Ground floor' premises of "Datta Prasad Building", House No.618, Netaji Subhash Chowk at Revdanda to the Plaintiff.
- (b) For the order and injunction of this Hon'ble Court, restraining the Defendant, his agents or servants from using and/or keeping any articles or things in the open passage from the entrance of the building upto the stair case of the upper floor of the suit building.
- (d) For ad-interim and interim orders in terms of prayers (b) and (c) above be granted.
- (e) That the inquiry may be directed under Order 20 Rule 12 of C.P.C. on to the determination of the mesne profit and the defendant may be directed to pay the same to the Plaintiff.
- (f) For cost.
- (g) For much and further orders necessary in the matter be passed.

13. After trying his luck in seeking rejection of Plaint under Order VII Rule 11 of the Code, Defendant –tenant filed application at Exhibit-35 seeking return of Plaint under Order VII Rule 10 of the Code *qua* prayer clause 15(b) relating to perpetual injunction. By impugned order, the learned District Judge has passed following order dated 27 October 2023:

Order

- 1) Civil Revision Application No.1/2023 is allowed.
- 2) The order passed below Exh.35 in Regular Civil Suit No.190/2015 dated 16/11/2022 by the 3<sup>rd</sup> Jt. Civil Judge, J.D. Alibag is hereby set aside.

- 3) The opponent/plaintiff is directed to elect the forum of the Rent Court for the purpose of the prayer of recovery of possession of the suit premises and to approach the Civil Court for the purpose of the prayer of perpetual injunction. Accordingly, he has to file the pursis before the learned trial court.
- 4) No order to the costs.

The District Court has thus held that the Rent Court does not have jurisdiction to decide the prayer for perpetual injunction in respect of the open space, not forming part of tenanted premises.

14. Plaintiff's Suit is filed in the Court of Civil Judge, Senior Division under the provisions of Section 33 of the MRC Act. The Suit is instituted in the Court of Civil Judge, Senior Division as Small Causes Court has not been established in respect of the concerned area. Under Section 33 of the MRC Act, the Courts specified therein have been vested with jurisdiction to entertain and try any Suit or proceedings between landlord and tenant relating to recovery of rent and possession of any premises and to decide any application made thereunder. Section 33 of the MRC Act reads thus:

**Section 33. Jurisdiction of courts.**

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, 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 jurisdictions,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

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

(c) 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 and to decide any application made under this Act** (other than the

applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); 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

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887, and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.

*(emphasis added)*

15. Thus, under the provisions of Sub Section 1 of Section 33 of the MRC Act, jurisdiction is vested in Rent Court to entertain and try every Suit or proceedings between landlord and tenant 'relating to recovery of rent or possession of any premises'. The legislature has consciously not used the words 'any suit or proceeding between landlord and tenant for recovery of rent and possession of any premises'. Thus, every Suit, in which there is a prayer relating to recovery of rent or for recovery of possession would lie exclusively in the jurisdiction of Rent Court. The issue is as to whether any incidental prayer to the main prayer of recovery of rent or recovery of possession of the tenanted premises can also be tried and entertained by Rent Court? Direct answer to the issue is to be found in the judgment of the Apex Court in **Mansukhlal Dhanraj Jain and Others V/s. Eknath Vithal Ogale**<sup>4</sup>. The issue that arose for

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<sup>4</sup> (1995) 2 SCC 665

consideration before the Apex Court is formulated in paragraph 1 of the judgment 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 Cause Courts, Act (hereinafter referred to as ‘the Small Cause Courts Act), 1882 or whether it is cognizable by the City Civil Court, Bombay, constituted under the Bombay City Civil Court Act.”

16. Thus the issue before the Apex Court was whether the suit filed by licensee against Defendant-licensor seeking injunction against disturbance of possession could be tried by the Small Causes Court under the provisions of Section 41(1) of the Presidency Small Cause Courts Act, 1882 (**PSCC Act**). The Apex Court considered the provisions of Section 41(1) of the PSCC Act and held in paragraphs 11 to 20 of the judgment as under:

11. 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 or rent thereof, irrespective of the value of the subject matter of such suits or proceedings."

12. 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 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 the 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.

13. 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 1 and 3 for attracting Section 41(1). The respondents claim to the contrary. It is obvious that if the present suits satisfy conditions 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.

14. 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 decisions 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 plain-tiff-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 and Anr. [1985] 1 S.C.R. 432, a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapukar, J. at Page 471 of the report (SCC pp.703-04, para 25) has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition 2 has been mentioned as under ;(SCC p.704, para 25)

"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."

15. In Doypack Systems (P) Ltd. v. Union of India [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 (1967) 1 MLJ 190 following and approving 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 term "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."

**16. 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.

17. 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, (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 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. ..."

18. When Section 41(1) of the Small Causes Courts Act is read in juxtaposition with the aforesaid Section 28 of the Bombay Rent Act, it

becomes clear that *pari 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 eviction 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."

19. The situation in the present case is almost parallel. The plaintiffs-licencees 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 parity of reasoning which appealed to the three-Judge Bench of this Court in Babulal's case (*supra*).

20. 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 three-Judge Bench of this Court in the case of **Natraj Studios v. Navrang Studios** [1981] 1 S.C.C. 523. 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 (SCC pp.531-32, para 16

"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. Section 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 of any of its provisions, 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 (SCC p.536, para 24)

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."

17. Thus, in ***Mansukhlal Dhanraj Jain*** (supra) the Apex Court has interpreted the words 'relating to recovery of possession' appearing in Section 41(1) of the PSCC Act and has held that every Suit between licensee and licensor can be tried by the Small Causes Court under Section 41 of the PSCC Act. The Apex Court has drawn distinction between the words '*for recovery of possession*' and '*relating to recovery of possession*' and has held that the phrase '*relating to recovery of possession*' appearing in Sub Section 1 of Section 41 of the PSCC Act is comprehensive in nature and takes in its sweep all types of suits and proceedings, which are concerned with recovery of possession of suit property from the licensee. The Apex Court has further held that the words '*relating to*' take in their sweep any suit in

which grievances made that the Defendant is threatening to illegal recovery of possession from licensee. The Apex Court has also juxtaposed provisions of Sub Section 1 of Section 41 of the PSCC Act with Section 28 of the Bombay Rent Act, which also used the phrase '*relating to recovery of possession*'. The Apex Court relied upon its three Judges Bench decision in the ***Babulal Bhuramal V/s. Nandram Shivram***<sup>5</sup>, in which it was 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 entitled for protection from eviction squarely falls within the jurisdiction of the Small Cause Court. The Apex Court further relied upon decision of latter three Judges Bench in ***Natraj Studios V/s. Navrang Studios***<sup>6</sup>, in which it was held that Section 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 a landlord and tenant relating to recovery of possession and negatively, it excludes the jurisdiction of any other court for entertaining any such Suit.

18. Thus the phrase '*relating to recovery of possession*' appears in three statutory provisions viz. Section 41(1) of the PSCC Act, Section 28(1) of the Bombay Rent Act and Section 33(1) of the MRC Act. As held by the Apex Court in ***Mansukhlal Dhanraj Jain*** the phrase '*relating to recovery of possession*' is comprehensive in nature and takes in its sweep all types of suits and proceedings, which are concerned with recovery of possession of suit property from the tenant.

19. Reliance of Ms. Rao on judgment of Single Judge of this Court in ***R.J. Mehta*** (supra) is also apposite. In that case, the tenant had

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<sup>5</sup> AIR 1958 SC 677

<sup>6</sup> 1981 1 S.C.C. 523

sought injunction against the landlord from keeping dogs in common passage outside the suit premises or in part of the passage leading to the suit premises or leading to common lavatory on the second floor. The Single Judge of this Court relying on Full Bench decision in ***Dattatray Krishna Jangam V/s. Jairam Ganesh Gore***, AIR 1965 Bombay 177 (which is also taken note of by the Apex Court in paragraph 23 of its judgment in ***Mansukhlal Dhanraj Jain***) held in paragraphs 4 and 5 as under:

4. I have carefully gone through section 28 of the Bombay Rent Act, 1947 as well as the Full Bench judgment and the Single Judge's judgment of 1965 and 1989 respectively of this Court. It is true that in 1989 Mh.L.J. 51; 1989 Mah. LR 64, the learned Single Judge has held that a mere interference with the access amounting to interference with the right to quiet enjoyment but without any element relating to recovery of possession cannot be considered as a claim or question arising out of Bombay Rent Act, and, therefore, such a suit does not fall u/s 28 of the Bombay Rent Act. However, the facts in this case are, according to me, different and the ratio of the Full Bench decision in AIR 1965 Bom. 177 would more appropriately apply. It is pertinent to mention that the Full Bench has discussed the purpose and scope of section 28 of the Bombay Rent Act in paragraphs 5, 6, 7 and 8 of the judgment. It is really not necessary to reproduce those paragraphs herein. Suffice it to say that the Full Bench has appreciated and held that there are three matters in respect of which exclusive jurisdiction is conferred on the special Court u/s 28 of the Bombay Rent Act, viz.,---

- (i) it must be a suit or a proceeding between a landlord and tenant;
- (ii) the suit or proceeding instituted either by the landlord or by the tenant must be in the capacity as landlord or the tenant as the case may be; and
- (iii) the suit of proceeding must relate to recovery of rent or possession of such premises.

The Full Bench also appreciated that expression used in the section 28 is "relating to recovery of rent or possession" and not "for recovery of rent or possession". The words "relating to" are wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. It has been held that section 28 confers jurisdiction upon the special Court not only to decide questions referred to in the section but also all matters which are incidental or ancillary to the determination of such question.



5. Therefore, it is in this context that one has to see the prayer of the respondent herein in his injunction notice. The allegation is that the petitioners are keeping dogs and barrels in the passage leading to the respondent's premises, i.e., Room No. 5 on the 2nd floor and the common lavatory. The dogs are ferocious. The respondent is a practicing Advocate. His clients cannot come to him because of the menace so created by the petitioners. Even he finds it difficult to enjoy the possession of the suit premises. No doubt the learned Counsel for the petitioner at this stage stated that the petitioner had not disturbed the possession of the respondent of the suit premises and that even the dog were now kept on the 4th floor. However, all that is to be considered on merits. The question before this Court is a limited one. It is when the suit premises are given possession but access to the premises is not obstructed causing merely some inconvenience, and is obstructed absolutely, can one say that the grievance is not relating to the possession. It is not possible for me to accept the petitioner's contention that the dispute herein is not relating to the possession of the suit premises by a tenant against the landlord. Accordingly, the petition is rejected. Rule is discharged with no order as to costs.

20. Reliance by Ms. Rao in judgment of Division Bench of this Court in ***Mirabelle Hotel Company Private Ltd.*** (supra) is also apposite. The case before the Division Bench involved Suit filed in the Small Causes Court at Mumbai by Plaintiff/Landlord for recovery of possession of tenanted premises on the ground of commission of breaches of terms and conditions of lease. Additionally, Plaintiff filed another suit before the Bombay City Civil Court for seeking permanent injunction against Defendant –tenant from fixing any partition, frames, wood works, fittings or fixtures, etc. in the suit premises and from giving any portion of the premises to any person except on the basis of furnished accommodation, inclusive of board and service. Issue of jurisdiction of City Civil Court was raised and the Trial Court ruled in favour of jurisdiction of City Civil Court and this is how the dispute reached this Court. Jurisdiction of City Civil Court to try and entertain suit for perpetual injunction between landlord and tenant was challenged by referring to provisions of Sections 28(1) of the Bombay Rent Act. In the light of above factual background. the Division Bench of this Court held as under:

The question was answered in favour of the plaintiffs on two grounds. It was observed in the first place that the jurisdiction of a Court to try a suit depends primarily on the averments contained in the plaint and not the defence taken in the written statement. Secondly, Mr. Justice Das approved the view expressed by the Division Bench in Govindram Salamatrai v. Dharampal that the defendant's claim of being a tenant and not a licensee cannot be regarded as a claim arising out of the Bombay Rent Act or any of its provisions. What is material to the present case is that in deciding the case, Mr. Justice Das did not interpret the expression "any claim or question arising out of this Act or any of its provisions" in Sub-section (1) of Section 28 in the manner in which that expression was interpreted by Mr. Justice J. C. Shah in Krishnaji Ramji v. Shamsunder or by Chagla C. J. in Shivaling Gangadhar v. Navnitlal. With reference to Sub-section (1) of S. 28 Mr. Justice Das observed:

"..... It proceeds on the basis that exclusive jurisdiction is conferred on certain Courts to decide all questions or claims under the Act as to parties, between whom there is or was a relationship of landlord and tenant ....."

A little later in the judgment His Lordship said:--

"..... When one has regard to the provisions in Part II it seems reasonably clear that the exclusive jurisdiction conferred by Section 28 is really dependent on an existing or previous relationship of landlord and tenant and on claims arising under the Act as between such parties."

His Lordship further said:--

"..... If the suit as framed is by a landlord or a tenant and the relief asked for is in the nature of claim which arises out of the Act or any of its provisions, then only and not otherwise will it be covered by s.28....."

**It appears clear from these observations that in order to oust the jurisdiction of ordinary Courts in dealing with a claim or question arising out of the Bombay Rent Act or any of its provisions, it is enough if the claim or question arises between a landlord and a tenant, and it is not necessary that it should arise in a suit or proceeding or in an application of the type specified in the earlier part of Sub-section (1) of Section 28.**

The same view is even more emphatically stated in the separate supporting judgment of Mr. Justice Sarkar in that case. After quoting the relevant part of Sub-section (1) of s. 28, His Lordship observed (p.113):

"The section deals with three different kinds of matters; namely. (1) suits or proceedings between a landlord and a tenant relating to the recovery of rent or recovery of possession of premises. (2) any application made under the Act and (3) a claim or question arising out of the Act or any of its provisions. It provides that no Court



except the Court of Small Causes, so far as properties in Greater Bombay are concerned, shall have jurisdiction to entertain and try any suit or proceedings or to decide any application or lastly to deal with any claim or question of any of the said three kinds mentioned in it."

After observing that the suit with which the Court was concerned did not fall within the first two categories mentioned above, his Lordship said: (p.114):

"That brings me to the third class of matters mentioned in the section, namely, claims, and questions arising out of the Act. ... It is important to note here that this part of the section does not purport to affect any Court's jurisdiction to entertain and try a suit but it only prevents a Court from dealing with certain claims or questions. Therefore, a Court may try a suit in so far as it does not thereby have to deal with a claim or question arising out of the Act. If the other claims and questions arising in the suit cannot be tried without dealing with a claim or question arising out of the Act, then of course, the practical result would be to prevent the Court from trying the suit at all."

It is clear from this quotation that his Lordship regarded the third category as separate and independent of the first two categories. In other words, the jurisdiction of the ordinary Courts to deal with a claim or question arising out of the Bombay Rent Act or any of its provisions is ousted by Sub-section (1) of s. 28 even if the claim or question does not arise in a suit or proceeding or in an application specified in the earlier part of Sub-section (1) of s. 28.

**The suit before us is filed by the landlords against their tenants. The landlords' claim to restrain the tenants from committing the breaches of some of the covenants of the agreement of lease arises out of Section 12(1) of the Bombay Rent Act. It follows that the Bombay Court of Small Causes has exclusive jurisdiction to deal with this claim. That being the only claim involved in the suit, the Bombay City Civil Court has no jurisdiction to entertain and try the suit.**

*(emphasis added)*

Thus, in ***Mirabelle Hotel Company Private Ltd.*** the Division Bench of this Court held that Suit filed in Bombay City Civil Court to restrain the tenant from committing breach of terms of tenancy was not maintainable as the Small Causes Court had exclusive jurisdiction to deal with the same. In my view, the judgment in ***Mirabelle Hotel Company Private Ltd.*** applies squarely to the present case.

21. Apart from the law expounded in the aforesaid judgments, I am of the view that the intention of the legislature in enacting Section 33 of the MRC Act is to provide a single forum for resolution of disputes amongst landlord and tenant and therefore any prayer incidental to the prayer for recovery of rent or for recovery of possession would fall within the purview of expression '*relating to recovery of possession of rent or possession of any premises*' used in Section 33(1) of the MRC Act, or else the landlord will have to approach multiple fora to seek different reliefs in respect of the same tenant and in respect of the same premises. To illustrate, if a tenant is accused of committing the act of nuisance and annoyance in premises immediately outside the tenanted premises for e.g. any open spaces, which are let out to him, I do not see any reason why the landlord, in addition to seeking recovery of possession of tenanted premises under Section 16(1)(c) of the MRC Act, can also not seek injunction against the tenant for discontinuing committing the act of nuisance and annoyance during pendency of the Suit. It would be too technical and absurd to expect the landlord to approach the Civil Court for relief of injunction from committing acts of nuisance and file a suit for recovery of possession before the Small Cause Court. The legislature has not intended filing of multiple proceedings to seek relief in respect of the same act against a tenant merely because the act committed by tenant, at times, exceeds the physical boundaries of the tenanted premises.

22. The key to the problem, to my mind, appears to be the capacity in which the act complained is committed by the Defendant. Whether he extends the space of tenanted premises by keeping his articles and by entering upon the adjoining open space as a tenant or claims possession thereof as a trespasser or adverse possessor, would decide

the forum which can be approached for seeking a decree for injunction. If he has encroached upon any land independent of his status as a tenant, what Mr. Joshi submits could be right. However, while occupying the tenanted premises, the tenant at times crosses the physical boundaries of tenanted premises and commits acts in appurtenant land not forming part of tenanted premises, the landlord is not expected to approach civil court for restraining the tenant from doing so. So long as the complained act is committed by the Defendant in his capacity as tenant, the landlord cannot be expected to approach multiple courts for seeking eviction and for stopping the tenant from committing acts of breach.

23. In my view, therefore, the Rent Court would have jurisdiction to try and entertain Plaintiff's prayer for perpetual injunction against the defendant –tenant from encroaching upon rear open space not forming part of the tenanted premises. The substantive prayer in paragraph 15(b) and 15(c) are sought by the Plaintiff essentially in aid to temporary injunction sought by him during pendency of the Suit. If Plaintiff was not to seek substantive injunctive prayer, the Court would have refused temporary injunction in his favour on that count alone. Therefore, though Mr. Joshi cannot be said to be entirely wrong in contending that passing of decree in favour of Plaintiff in terms of prayer clause 15(a) would virtually render prayers 15(b) and 15(c) infructuous, the said prayers in clauses 15(b) and 15(c) has aided him in securing order of temporary injunction. If the act committed by a tenant falls foul of any of the clauses of Section 16(1) of the MRC Act, the same creates right in landlord's favour to file Suit for eviction. However, to expect that landlord must continue to suffer the offending acts of Defendant till decision of the Suit is inconceivable, and in a given case, landlord can seek an order for injunction against tenant

from continuing to committing offending acts during pendency of the Suit. Whether to grant temporary injunction in a given case or not would depend on facts and circumstances of each case. In the present case, the District Court has ultimately found that Plaintiff deserves to be granted an order of temporary injunction and has accordingly enjoined the Defendant from using or occupying the rear open space for any purpose by order dated 9 December 2015. Cursorily, Defendant /tenant did not challenge the order of temporary injunction granted by District Court on 9 December 2015 on the special plea later adopted by him that the prayer under paragraph 15(b) of the Plaint fall outside the jurisdiction of the Small Causes Court. Therefore, the ingenuity of Defendant /tenant in inventing fresh ground for creating hurdles in decision of the Suit instituted by Plaintiff for recovery of possession is clearly deplorable.

24. Also of relevance is the fact that through Plaintiff has pleaded in paragraph 6 of the Plaint that the rear open space is 'beyond the tenanted premises', factually it cannot be contended that there is absolutely no relation between the suit premises and the rear open space. In paragraph 3 of the Plaint, Plaintiff has also averred that there is a toilet block located in the rear open space and that Plaintiff is permitted to use the said toilet block. There is no doubt to the position that said toilet block is accessible through rear open space. Therefore, for accessing the toilet block, Defendant /tenant undoubtedly needs to pass through the rear open space. Thus, in the facts of the present case there is some connection between the tenanted premises and rear open space. This is yet another reason why the Rent Court would have jurisdiction to entertain prayer for perpetual injunction to restrain the Defendant /tenant from occupying the rear open space.

**25.** The conspectus of the above discussion is that the prayer of Plaintiff for perpetual injunction in paragraph 15(b) of the Plaint would also fall in the jurisdiction of the Rent Court. The District Court has erred in holding that the said prayer in Clause 15(b) is outside the jurisdiction of Rent Court. It has erred in relying on judgment of this Court in ***Shantabai Yashwant Kothare*** (supra). The District Court has not even bothered to discuss the ratio of judgment of this Court in ***Shantabai Yashwant Kothare*** and has erroneously observed that this Court has held in the said judgment that ‘Civil Judge, Junior Division cannot decide the claim or question arising out of provisions of Rent Act simultaneously in one and the same proceedings while exercising its ordinary jurisdiction’. In ***Shantabai Yashwant Kothare***, Suit was instituted by Plaintiff-landlord for recovery of possession of tenanted premises as well as of encroached area under the provisions of Transfer of Property Act, 1882. In the written statement, Defendant-tenant pleaded that the area in which the suit premises were located (Majiwade Grampanchayat) was included in the limits of Thane Municipal Corporation and that provisions of Bombay Rent Act were attracted. The Trial Court decreed the Suit without considering the objection of jurisdiction. The Appellate Court held that though village-Majiwade was incorporated in Municipal Corporation making the provisions of Bombay Rent Act applicable, the Court of Civil Judge, Junior Division will still have jurisdiction to decide the Suit. The eviction decree was accordingly sustained. This Court held that while entertaining the Suit, the Court of Civil Judge, Junior Division was exercising ordinary jurisdiction, and it was not open for that Court to decide a dispute falling within the purview of Section 28 of the Bombay Rent Act. This Court further held that a composite Suit was instituted

invoking two different jurisdictions and that therefore Civil Court could not have entertained such a composite suit. This Court therefore held that the Court of Civil Judge Junior Division exercising ordinary jurisdiction could not have entertained a suit under Section 28 of the Bombay Rent Act. Thus, the ratio of the judgment is that Court of Civil Judge Junior Division while exercising ordinary jurisdiction cannot decide suit under Rent Act and the Defendant therein being a protected tenant, the Rent Court/Small Causes Court had jurisdiction to try the suit. This Court in ***Shantabai Yashwant Kothare*** was not concerned with the issue whether the Rent Court could decide the prayer for removal of encroachment. In fact, the judgment can well be read against the Defendant as this Court ultimately directed return of Plaint to be presented before Rent Court/Small Causes Court, although it contained a prayer for removal of encroachment. Thus, reliance by Mr. Joshi on judgment of this Court in ***Shantabai Yashwant Kothare***, far from assisting the case of his clients, actually militates against them.

26. The District Court has thus erred in reversing order passed by the Appellate Court. The judgment and order passed by the District Court suffers from palpable errors and vice of perversity, warranting interference of this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India.

27. Petition accordingly succeeds and I proceed to pass the following order:

- i. Judgment and order dated 27 October 2023 passed by the learned District Judge, Raigad in Civil Revision Application No.1 of 2023 is set aside.

- ii. Order dated 16 November 2022 passed by 3rd Joint Civil Judge, Junior Division, Alibag, rejecting application at Exhibit-35 is confirmed.

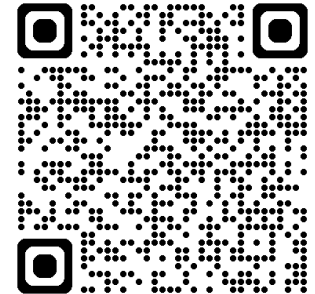
28. Writ Petition is allowed in above terms. Rule is made absolute. Considering the facts and circumstances of the case, there shall be no orders as to costs.

**[SANDEEP V. MARNE, J.]**



Case Brief & MCQs on "Santosh Motiram Pisat v. Sumitra Mohanlal Lain" (2024:BHC-AS:42959) is available in the eBook:

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