

# **BOMBAY HIGH COURT**

Shivaling Gangadhar Tambekar

Vs.

Navnitlal Amritlal Gandhi

Civil Revision Application No. 1062 of 1956

(M.C. Chagla, C.J.)

06.12.1957

## **JUDGMENT**

### **M.C. Chagla, C.J.**

1. The petitioner is the landlord and the opponent is the tenant. The petitioner filed a suit in the civil Court complaining that the tenant had used the premises as business premises when they were intended to be used as residential premises, that for the purpose of his business, which is of manufacturing exercise books, he had installed cutting and ruling machines and the working of these machines had caused damage to the petitioner's property. He, therefore, prayed for damages and also a mandatory injunction for the removal of these machines. The trial Court held that one of the two machines had caused and would cause damage to the property of the landlord. He, therefore, issued a mandatory injunction upon the tenant to remove the cutting machine. The tenant appealed and the learned Assistant Judge, Poona, came to the conclusion that the civil Court had no jurisdiction to try the suit, that this was a suit that fell under the Rent Restriction Act (Act LVII of 1947) and, therefore, it was only cognizable by the special Court set up under that Act. Having come to this conclusion, he felt that the issue on the merits did not survive and returned the plaint to the plaintiff to be presented to the proper Court. The landlord has now come in revision.

2. What is pointed out by Mr. Walavalkar is that under Section 28, if there is any claim or question which, arises out of the Rent Act, it can only be tried by the special Court and no other Court has jurisdiction to deal with that question, and it is said that all the issues that were tried by the trial Court are issues that fall under the Rent Act. It is pointed out that under Section 13(1)(a), if the tenant has committed any act contrary to the provisions of Clause (o) of Section 108 of the Transfer of Property Act, it is a ground for tenant's eviction. Then, (b) if the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure and (k) that the premises have not been used without reasonable cause for the purpose for which they

were let for a continuous period of six months immediately preceding the date of the suit, these two grounds also entitled the landlord to recover 'possession, and therefore it is urged that these are questions that can only be dealt with by the special Court. In my opinion, this is really oversimplifying the situation. Let us turn to Section 28 again to see what exactly is meant by the language used by the Legislature. Now, in that section, the Legislature has excluded the jurisdiction of the civil Courts and conferred jurisdiction upon special Courts in respect of three matters : (1) Where you have a suit or proceeding between a landlord and a tenant relating to the recovery of rent, or possession of any premises ; (2) Where you have an application made under the Act and (3) Where you have a claim or question arising out of the Act. Now, undoubtedly this is a suit between a landlord and a tenant. But it is not a suit for possession or relating to possession or recovery of rent. Therefore, it does not fall under the first category. This is not again an application under the Act and, therefore, the second category is also excluded. But Mr. Walavalkar pins his faith on the third category and he says that, inasmuch as the questions that the civil Court had to deal with are questions which fall under Section 13, they are questions arising out of the Act. Now, I am inclined to take the view that when the civil Courts have been precluded from dealing with any claim or question arising out of the Act, it means that, reading the earlier part of the section, the claim or question must arise in a suit or an application referred to earlier in that part of Section 28. There must be a suit for possession or there must be an application under the Act and in that suit or in that application a claim or question must arise out of the Act. If those conditions are satisfied, then a civil Court would have no jurisdiction. Now, it is clear here that the claim or question which may arise in a suit for possession and to which the provisions of Section 13 would apply cannot have any application to the plaintiff's suit because it is a suit for damages and mandatory injunction nor is it an application which could have been made under the Act. Mr. Walavalkar does not dispute and he cannot dispute that a suit for damages or injunction could not be filed by the landlord against the tenant in the special Court under the Rent Act and, therefore, Mr. Walavalkar is driven to argue that, even though the suit could not have been filed in the special Court, if the questions that arose were the same as the questions that arise under Section 13, then the civil Court has no jurisdiction. Now, even assuming that I am in error when I take the view that the claim or question referred to in the third part of the relevant portion of Section 28 must be a claim or question which must arise in a suit or in an application and that that claim or question could arise independently of any suit or application, though I do not see how that can happen, even so this particular claim or question does not arise out of the Act. The claim or question in the suit is whether the tenant is liable to pay damages or to submit to an injunction by reason of certain acts committed by him. That claim or question can never arise out of the Rent Act. That is a matter which the Legislature has not committed to the jurisdiction of the special Court and Mr. Rane is right when he says that the Legislature has not used the expression "under the Act", but "arising out of the Act," a stronger expression with definite significance and connotation. Therefore, we have this clear position that the landlord, not wishing to eject his tenant, not seeking possession of the demised premises, does not wish to avail himself of the remedy given to him under the Rent Act under Section 13. He wants to confine his relief merely to a claim for damages and injunction. According to Mr.

Walavalkar, he would be on the horns of this dilemma that he cannot come to the civil Court for this lesser relief; he cannot go to the special Court for this relief for the special Court cannot deal with it and, therefore, he must either forego his right under the law or he must file a suit to evict his tenant. Surely such an extraordinary position was not contemplated by the Rent Act and I see no reason why it is necessary to give such a meaning to the relevant portion of Section 28. Undoubtedly when there are proceedings between a landlord and a tenant dealing with matters which the special Court only can deal with, then any question which arises under the Act must be dealt with by that Court. But when you have a litigation between a landlord and a tenant which does not deal with any question with which the Rent Act is concerned, then surely it is rather extraordinary to suggest that the civil Court has no jurisdiction to deal with those questions. The fundamental fallacy underlying Mr. Walavalkar's argument is that no suit can be filed by a landlord against the tenant except in the special Court. A landlord can file a suit against the tenant in an ordinary Court provided it is not a suit for possession or in respect of rent; also provided that it cannot be the subject of an application contemplated by the Act and also that it does not seek to decide any question which arises out of the Act as interpreted by me. If the suit which the landlord wishes to file does not fall in any of these three categories, there is not the slightest reason why the civil Court is not open to him. If Mr. Walavalkar's arguments were to be accepted, it would mean that a civil Court is barred against the landlord in all matters if he wishes to bring his tenant before the Court. Well, if that was the law, nothing would have been easier than for the Legislature to say that no landlord shall file any suit against his tenant except in the special Court. But fortunately that is not the wording.

3. Mr. Walavalkar put forward an argument which certainly deserves careful consideration. He says that in the guise of obtaining an injunction, he may go to the ordinary Court and obtain an injunction which would be practically tantamount to driving his tenant out of the premises. I agree with him that the landlord should not be permitted to circumvent the Rent Restriction Act, and that if his suit is substantially for possession or for ejection, he must go to the special Court, and I am equally clear in my mind that a civil Court should not grant an injunction to the landlord which in effect would mean the tenant having to leave the premises, I do not wish to express any opinion on the merits of this case, but all that the trial Court has ordered so far is that a particular machine which, on the evidence on the record, will do damage to the landlord's property, should be removed. Barring that, there does not seem to be any limitation on the rights of the tenant or any attempt at making him close up his business or leave the premises.

4. I would, therefore, set aside the order of the learned Assistant Judge, hold that the Court had jurisdiction to try this suit and, inasmuch as the learned Assistant Judge has not decided the question on merits, I will remand this matter back to him with a direction that he will dispose of the appeal in the light of this judgment. I also direct that the appeal should be disposed of as expeditiously as possible. Rule absolute. Costs of the application costs in the appeal. Rule made absolute.