

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR

Writ Petition No.4873 of 2006

Radheshyam s/o Zumberlal Chandak,  
Aged about 60 years,  
R/o Prabhat Chowk,  
Amravati.

... Petitioner

Versus

1. The District Judge, Amravati.
2. Sou. Medha w/o Prashantrao Popalkar,  
Aged about 38 years,  
R/o Ranpise Nagar,  
Akola.

... Respondents

Shri J.T. Gilda, Advocate for Petitioner.  
Smt. S.S. Wandile, AGP for Respondent No.1.  
Shri J.J. Chandurkar, Advocate for Respondent No.2.

**Coram : D.K. Deshmukh & R.K. Deshpande, JJ.**

**Date of Reserving the Judgment : 14-9-2010**  
**Date of Pronouncing the Judgment : 5-10-2010**

**Judgment (Per R.K. Deshpande, J.) :**

1. This writ petition is placed before us to decide the following question of law, upon reference being made by the learned Single Judge (Shri B.P. Dharmadhikari, J.) as per his order dated 26-4-2010 :

*“Whether the Court invested with small cause powers under Section 28 of 1869 Act can function as such and exercise unlimited jurisdiction under Chapter IV A-1 of 1887 Act,*

*without any ceiling on its pecuniary jurisdiction ?*

2. The learned Single Judge of this Court, Shri M.S. Deshpande, J. (as he then was), in his judgment in *Salimkhan s/o Azimkhan v. Mohammad Ibrahimkhan*, reported in 1987 Mh.L.J. 283, has taken the view that a Civil Judge, Senior Division, invested with the jurisdiction of the Court of Small Causes by the High Court under Section 28 of the Bombay Civil Courts Act, 1869, has jurisdiction to try the suits or proceedings between a licensor and licensee, or a landlord and tenant irrespective of the value of the subject-matter of such suits or proceedings, as contemplated by Section 26 under Chapter IV-A-1 of the Provincial Small Cause Courts Act, 1887.

3. Disagreeing with the aforesaid view, Shri B.P. Dharmadhikari, J., has expressed the opinion that Section 28 of the Bombay Civil Courts Act, 1869 does not confer the power upon the High Court to invest any Civil Judge with the jurisdiction of a Court of Small Causes for trial of suit cognizable by such Court, irrespective of the value of the subject matter of such suit and, therefore, any Civil Judge invested with the jurisdiction of the Court of Small Causes under Section 28 of the Bombay Civil Courts Act, 1869 cannot exercise jurisdiction to entertain and try the suit or proceedings between a licensor and licensee, or a landlord and tenant relating to recovery of possession of any immovable property, irrespective of the value of the subject-matter of such suit or proceedings.

4. The factual background leading to reference can be stated for

the sake of convenience and to appreciate the controversy, as under :

The petitioner is the tenant/defendant in the Small Cause Suit No.5 of 2006 filed by respondent No.2/landlady on 3-1-2006 for ejectment, possession, arrears of rent and damages, which was allotted to the Court of 6<sup>th</sup> Joint Civil Judge, Junior Division, Amravati. The petitioner/tenant filed his written statement on 13-3-2006 opposing the claim of respondent No.2/landlady. The petitioner/tenant filed an application Exhibit 14 on 23-3-2006, in Small Cause Suit No.5 of 2006 for framing the issues, contending that the Court of Civil Judge, Junior Division, has no power to try the said suit as small cause suit for the reason that the valuation of the suit was given in para 10 of the plaint as Rs.24,300/-, for money claimed of Rs.12,300/-, for arrears of rent as Rs.9,000/-, and for damages as Rs.300/- per day.

5. The Trial Court passed an order rejecting application Exhibit 14 on 10-4-2006. It was held that the suit was valued for the purposes of court fee and jurisdiction at Rs.22,600/- and in view of the decisions of this Court in *Salimkhan s/o Azimkhan v. Mohammad Ibrahimkhan*, reported in 1987 Mh.L.J. 283; *Urdu Education Society and another v. Dinshaw Naoraji Printer*, reported in 1994 Mh.L.J. 1650; and *Kutubunisa Begum v. Bilquees Jahan Begum*, reported in 1996(1) Mh.L.J. 184, there is no bar on the aspect of pecuniary jurisdiction and the Court is at liberty to try the suit as small cause suit irrespective of its valuation. The application was, therefore, rejected. This order is subject-matter of challenge in the present writ petition.

6. Shri Gilda, the learned counsel appearing for the petitioner/tenant, relying upon the provision of Section 28 of the Bombay Civil Courts Act, 1869 (for short, hereinafter referred to as “the Civil Courts Act”), has urged that the said provision does not confer power upon the High Court to invest any Civil Judge with the jurisdiction of the Court of Small Causes for the trial of the suits or proceedings cognizable by such Court irrespective of the value of the subject matter of such suit or proceedings, as contemplated by Section 26 of the Provincial Small Cause Courts Act, 1887 (for short, hereinafter referred to as “the Small Cause Courts Act”). He submits that the power of the High Court under Section 28 of the Civil Courts Act pertains to the jurisdiction of the Court of Small Causes, for the trial of the suits other than those specified under Section 26 of the Small Cause Courts Act, in view of the pecuniary restrictions for conferment of such power contained in Section 28 of the Civil Courts Act. Shri Gilda supported the view taken by the learned Single Judge in his order of reference.

7. Shri Chandurkar, the learned counsel appearing for respondent No.2/landlady, relying upon the provisions of Sections 4, 5, 15(2), 16, 26, 32 and 33 of the Small Cause Courts Act, urged that the Civil Judge invested with the jurisdiction of the Court of Small Causes for the trial of suits cognizable by such Courts, as contemplated by Section 28 of the Civil Courts Act, is competent to exercise the jurisdiction of the Court of Small Causes under Section 26 of the Small Cause Courts Act, irrespective of the value of the subject matter of such suits or proceedings. He supported the view taken by the learned Single judge in *Salimkhan's* case, cited supra.

8. In order to consider the question under reference, the relevant provisions of the Bombay Civil Courts Act, 1869 will have to be seen first. Section 21 of the said Act deals with the establishment of Civil Courts subordinate to District Court in each District by the State Government and the Judges appointed in such subordinate Courts are to be called as the Civil Judges, as contemplated by Section 22 of the said Act. Section 22A of the said Act empowers the State Government to fix and alter the local limits of the ordinary jurisdiction of the Civil Judges by issuing notification in the official gazette. Section 24 of the said Act states that the Civil Judges shall be of two classes. The jurisdiction of a Civil Judge, Senior Division, extends to all original suits and proceedings of civil nature, whereas the jurisdiction of a Civil Judge, Junior Division, extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed its amount or value of one lakh rupees.

9. Thus, all the suits or proceedings of civil nature wherein the subject matter does not exceed amount or value of rupees one lakh are to be tried by the Civil Judge, Junior Division, within the local limits of ordinary jurisdiction fixed by the State Government under Section 22A of the said Act. If the value of the subject matter of the suits or proceedings exceeds rupees one lakh, then the same is required to be tried by the Civil Judge, Senior Division, within the local limits of jurisdiction fixed by the State Government under Section 22A of the said Act.

10. The Provincial Small Cause Courts Act, 1887 was brought into force, subsequent to the Civil Courts Act. Chapter II of the said Act deals

with the constitution of Courts of Small Causes and Section 5 under the said Chapter deals with the establishment of Courts of Small Causes. It empowers the State Government to establish the Courts of Small Causes and sub-section (2) empowers the State Government to define the local limits of jurisdiction of the Court of Small Causes. Chapter III of the said Act deals with the jurisdiction of the Courts of Small Causes and Section 15 under the said Chapter deals with the cognizance of suits by Courts of Small Causes. The said provision being relevant is reproduced below :

***“15. Cognizance of suits by Courts of Small Causes.***

*(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suit excepted from the cognizance of a Court of Small Causes.*

*(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed two thousand rupees shall be cognizable by a Court of Small Causes mentioned in the orders.*

*(3) Subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.”*

Sub-section (1) of Section 15 reproduced above prohibits a Court of Small Causes from taking cognizance of the suits specified in the second

schedule, as a suit excepted from the cognizance of a Court of Small Causes. The second schedule under the said Act contained entries no.(4) and (8), which are reproduced below :

*“(4) a suit for the possession of immoveable property or for the recovery of an interest in such property.*

*(8) a suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the State Government with authority to exercise jurisdiction with respect thereto.”*

Thus, a suit for the possession of immovable property or for the recovery of an interest in such property or a suit for the recovery of rent other than house rent was excluded from the jurisdiction of a Court of Small Causes and essentially a Court of Small Causes was invested with the jurisdiction to try the suits of a civil nature of which the value does not exceed rupees two thousand, in terms of sub-section (2) of Section 15, reproduced above. However, this is subject to the exceptions specified in the Schedule and to the provisions of any enactment for the time being in force.

11. Section 16 of the said Act deals with the exclusive jurisdiction of the Court of Small Causes, the same being also relevant, is reproduced below :

**“16. Exclusive jurisdiction of Courts of Small Causes.**

*Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court*

*having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.”*

A combined reading of Sections 15 and 16, reproduced above, makes it clear that the place where a Court of Small Causes is established under Section 5 of the Act prescribing the local limits of its jurisdiction, the jurisdiction of any other Court established at the same place stands excluded in respect of such suits or proceedings, the value of which does not exceed rupees two thousand. The position thus, was that although the Court of Civil Judge, Junior Division, is empowered to entertain and try the suits or proceedings of a civil nature wherein the subject matter does not exceed its amount or value of rupees one lakh, as contemplated by Section 24 of the Bombay Civil Courts Act, 1869, its jurisdiction was excluded at a place where the Court of Small Causes is established by the State Government, to try and decide the suits of a civil nature, the value of which does not exceed rupees two thousand.

12. In case of a place where a Court of Small Causes has not been constituted by the State Government, as prescribed by Section 5 of the Small Cause Courts Act, Section 28(1) of the Civil Courts Act empowers the High Court to invest any Civil Judge with jurisdiction of a Court of Small Causes. The said provision, being relevant, is reproduced below :

*“28(1) The High Court may invest any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts upto such amount as it may deem proper, not exceeding in the case of a Civil Judge (Senior*

*Division) twelve thousand rupees and in the case of a Civil Judge (Junior Division) six thousand rupees.”*

Thus, where the Courts of Small Causes are not constituted, the High Court is empowered to invest any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts upto such amount as it deems proper, not exceeding rupees twelve thousand, in the case of Civil Judge, Senior Division, and in the case of Civil Judge, Junior Division, rupees six thousand.

13. At this stage, it is required to be seen that under the provisions of the Civil Courts Act, there is no pecuniary limit for exercise of ordinary original civil jurisdiction by a Civil Judge, Senior Division, as in view of Section 24 of the said Act, the jurisdiction of Civil Judge, Senior Division, extends to all original suits or proceedings of a civil nature and the jurisdiction of Civil Judge, Junior Division, extends to all suits or proceedings of a civil nature, wherein the subject matter does not exceed its amount or value of rupees one lakh. In contrast to this, the provision of Section 28(1) of the Civil Courts Act specifies the pecuniary limit of rupees twelve thousand for Civil Judge, Senior Division, and of rupees six thousand for Civil Judge, Junior Division, to exercise jurisdiction. In view of this, the ordinary original civil jurisdiction conferred upon Civil Judge, Senior Division, and Civil Judge, Junior Division, under Section 24 of the Civil Courts Act cannot be read into the provision of Section 28(1) of the said Act.

14. Section 32 of the Small Cause Courts Act deals with the

application of the Act to Courts invested with jurisdiction of Court of Small Causes, the same being relevant is also reproduced below :

**“32. Application of Act to Courts invested with jurisdiction of Court of Small Causes.--(1) So much of Chapters III, VI and IV-A1 as relates to--**

- (a) *the nature of the suits cognizable by Courts of Small Causes,*
- (b) *the exclusion of the jurisdiction of other Courts in those suits,*
- (c) *the practice and procedure of Courts of Small Causes,*
- (d) *appeal from certain orders of those Courts and revision of cases decided by them, and*
- (e) *the finality of their decrees and order subject to such appeal and revision as are provided by this Act,*

*applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.*

(2) *Nothing in sub-section (1) with respect of Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that*

*jurisdiction.”*

It is thus apparent that where the High Court has invested such powers of a Court of Small Causes upon Civil Judges, as contemplated under Section 28 of the Civil Courts Act, the provisions of Chapters III and IV relating to items (a) to (e) of sub-section (1) of Section 32, reproduced above, were made applicable to such Courts. In the absence of vesting of such powers under Section 28(1) of the Civil Courts Act, the provisions of Chapters III and IV relating to items (a) to (e) of sub-section (1) of Section 32 would not be available to Civil Judge, Senior Division, or Civil Judge, Junior Division, while exercising its ordinary original civil jurisdiction under Section 24 of the Civil Courts Act.

15. Section 33 of the Small Cause Courts Act deals with the application of the Act and the Code to Court so invested as to two Courts. The said provision is reproduced below :

**“33. Application of Act and Code to Court so invested as to two Courts.--** *A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure (14 of 1882) be deemed to be different Courts.”*

The aforesaid provision clearly maintains the distinction between the

suits of a civil nature to be cognizable by a Court of Small Causes and those not cognizable by a Court of Small Causes. It contemplates that though the same Court exercises powers under the Small Cause Courts Act and under the Code of Civil Procedure, it shall be treated as different Courts for the said purposes.

16. By Maharashtra Act No.24 of 1984, the jurisdiction of a Court of Small Causes was enlarged by deleting entries no.(4) and (8) from second schedule of the Small Cause Courts Act and introducing a provision of Section 26(1) under Chapter IV-A1 relating to recovery of possession of certain immovable property and certain licence fees or rent. The said provision being relevant for the purposes of the present case is reproduced below :

***“26. Suits or proceedings between licensors and licensees or landlords and licensees or landlords and tenants for recovery of possession of immovable property and license fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.***

*(1) Notwithstanding anything contained elsewhere in this Act, 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 licensors and licensee or a landlord and tenant, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent*

*therefor, irrespective of the value of the subject matter of such suits for proceedings.”*

The effect of aforesaid amendment was that a Court of Small Causes constituted or established under Section 5 of the Small Cause Courts Act, was conferred with the 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 the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of licence fees or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

17. We are not concerned with a case where a Court of Small Causes has been constituted for the local limits of District Amravati. Undisputedly, there is no Court of Small Causes established by the State Government, as contemplated by Section 5 of the Small Cause Courts Act. We are concerned with a position where the High Court has, in exercise of its powers under Section 28(1) of the Civil Courts Act, invested a Civil Judge, Junior Division, Amravati, with the jurisdiction of a Court of Small Causes for trial of such suits cognizable by a Court of Small Causes. Undisputedly, the suit in question has been registered as Small Cause Suit No.5 of 2006 and it is valued for the purposes of court fees and jurisdiction at Rs.22,600/-, which is in excess of the pecuniary limits of jurisdiction under Section 28(1) of the Civil Courts Act. The question is, where the value of subject matter of the suits or proceedings exceeds the pecuniary limit of rupees twelve thousand or rupees six thousand, as the

case may be, specified under Section 28(1) of the Civil Courts Act, whether a Civil Judge invested with the jurisdiction of the Court of Small Causes by the High Court, for the trial of the suits cognizable by such Courts, shall have the jurisdiction to try such a suit as a summary suit, that too irrespective of value of the subject matter of such suit, in view of Section 26 of the Small Cause Courts Act or it has to be tried as a regular suit in accordance with the provisions of the Code of Civil Procedure.

18. Now turning to the judgment delivered by the learned Single Judge of this Court in *Salimkhan's* case, the facts of the case were that the suit for a decree for ejection and mesne profits was passed by the Civil Judge, Senior Division, Achalpur, who was invested with the jurisdiction of a Court of Small Causes by the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act to try the suit for the value upto Rs.1,800/-. The suit was valued for the purposes of jurisdiction at Rs.2,700/-. It was tried as a regular suit. The tenant preferred an appeal before the District Court. Before the District Court, it was not disputed that the Court of Civil Judge, Senior Division, Achalpur, had summary powers upto Rs.1,800/- only and, therefore, it was decided as a regular suit. The question before the District Judge was that whether an appeal lay to the District Court under Section 96 of the Code of Civil Procedure only on the question of law. The learned District Judge decided the case both on the question of law as well as on facts. The appeal was dismissed, against which the tenant had preferred a writ petition before this Court.

19. The facts in *Salimkhan's* case clearly show that the suit was

valued for the purposes of jurisdiction at Rs.2,700/-, whereas the Civil Judge, Junior Division, who was invested with powers of a Court of Small Causes, was competent to try the suit for value upto Rs.1,800/-. Hence, the suit was tried as regular suit. In view of this, the question whether the Civil Judge invested with powers of Court of Small Causes should try the suit as summary suit or as regular suit, was neither involved nor decided. The learned Single Judge proceeds on the assumption that a Court of Civil Judge, Senior Division, invested with the power to try small cause suit of the value upto Rs.1,800/- under Section 28 of the Bombay Civil Courts Act, was also a Court of Small Causes, as defined under Section 4 of the Small Cause Courts Act, and the combined effect of Section 4 of the Small Cause Courts Act and Section 28 of the Bombay Civil Courts Act was that the Civil Judge, Senior Division, Achalpur, had the jurisdiction of a Court of Small Causes, ordinarily upto a particular limit. However, it was held that in view of the *non obstante* clause with which Section 26 of the Small Cause Courts Act begins, nothing contained in Sections 15 and 16 of the said Act would prevent the Court of Small Causes from exercising the jurisdiction to entertain and try the suits of the description mentioned in Section 26(1). It was thus held that irrespective of the limit placed on the jurisdiction of the Trial Court to take cognizance of small cause suits upto a particular value only, its jurisdiction to entertain the suits under Section 26 of the Provincial Small Cause Courts Act would be unaffected and it would have the jurisdiction to entertain and decide such suits. The writ petition was, therefore, dismissed.

20. The learned Single Judge, in his order of reference

dated 26-4-2010, has considered the aforesaid view taken in *Salimkhan's* case. It has been noted that *Salimkhan's* case does not consider the provision of Section 32 of the Small Cause Courts Act, which shows the distinction made in the Courts established under Section 4 of the Small Cause Courts Act and other Courts invested with that jurisdiction. A view has been taken that Section 26 of the Small Cause Courts Act, though begins with *non obstante* clause, it speaks of Court of Small Causes and thus leads one to Section 4 of Small Cause Courts Act. After referring to various provisions right from Section 4 to Section 33 of the Small Cause Courts Act, it has been held that if the Court invested with the powers of Small Causes Court under Section 28 is to be treated as Court equivalent or equal to Court of Small Causes constituted under Section 4 thereof, there was no need to have such peculiar provision in the shape of Sections 32 and 33 in the scheme of Small Cause Courts Act. It has been held that Section 26 of the Small Cause Courts Act expressly overrides the provisions contained in the said Act only and it does not and cannot override the provisions of other enactments, like the Bombay Civil Courts Act. It has been held that Section 28 of the Bombay Civil Courts Act does not permit the High Court to confer jurisdiction beyond a particular limit on Judge of other Court on whom small causes powers are invested. A view has been taken that Section 26 of the Small Cause Courts Act deals with the Courts established under Section 4 of the said Act and it cannot have any effect on the powers of the High Court under Section 28 of the Bombay Civil Courts Act. It has, therefore, been held that any Civil Judge invested with the jurisdiction of the Court of Small Causes under Section 28 of the Bombay Civil Courts Act cannot exercise jurisdiction to entertain and try the suits or proceedings between the landlord and

tenant relating to recovery of possession of immovable property, irrespective of the value of the subject matter of the suits or proceedings.

21. In order to consider the aforesaid conflicting views, Section 4 of the Small Cause Courts Act needs to be seen and the same is, therefore, reproduced below :

**“4. Definition.--***In this Act, unless there is something repugnant in the subject or context, “Court of Small Causes” means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.”*

This Section deals with the definition of the Court of Small Causes and it is not a provision dealing with constitution or establishment of a Court of Small Causes, as has been held in the order of reference by the learned Single Judge. The definition is in two parts. The first part refers only to a Court of Small Causes constituted under the said Act, i.e. under Section 5. A Civil Judge invested with the jurisdiction of a Court of Small Causes by the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act, cannot be a Court of Small Causes constituted under Section 5 of the said Act for the reasons **(i)** that Section 4 begins with the words “unless there is something repugnant in the subject or context”, and Section 28(1) of the Civil Courts Act deals with a Civil Judge invested with jurisdiction of a Court of Small Causes, which is repugnant in the subject or context, as contemplated by Section 4; and **(ii)** that there is a difference between Section 5 of the Small Cause Courts Act and

Section 28(1) of the Civil Courts Act. Such difference being that; **(a)** Section 5 deals with the powers of the State Government, whereas Section 28(1) deals with the powers of the High Court; **(b)** Section 5 deals with establishment of a Court of Small Causes, whereas Section 28(1) deals with investing of jurisdiction of a Court of Small Causes with any Civil Judge, **(c)** Section 5 is place/places specific, whereas Section 28(1) is not place/places specific, but it is a Judge or Court specific; and **(d)** Section 28(1) deals with pecuniary limits of jurisdiction to be invested by the High Court, whereas Section 5 does not deal with pecuniary limits of a Court of Small Causes.

22. So far as the second part of the definition is concerned, it is “inclusive of any person exercising jurisdiction under the said Act in any such Court.” In our view, the expression “any person” used therein speaks only of persons appointed as Presiding Officers, including the Additional Judges under Section 8 and the Registrar under Section 12 of the Small Cause Courts Act, to discharge the functions as a Judge. The expression “any such Court” referred therein again pertains only to “a Court of Small Causes” established under Section 5 of the said Act and not to “a Civil Judge” invested with the jurisdiction of a Court of Small Causes by the High Court under Section 28(1) of the Civil Courts Act. The reasons for taking such views are that **(i)** a Civil Judge invested with the powers of a Court of Small Causes does not occupy the position as a Presiding Officer of a Court of Small Causes established under Section 5 of the Small Cause Courts Act, and **(ii)** there is no deeming provision either under the Small Cause Courts Act or under the Civil Courts Act to treat a Civil Judge invested with the powers of Court of Small Causes

under Section 28(1) of the Civil Courts Act as a Court of Small Causes established under Section 5 of the Small Cause Courts Act, and (iii) the scheme of the Act, as has been rightly pointed out on the basis of the provisions of Sections 4 to 33 of the Small Cause Courts Act, in the order of reference by the learned Single Judge, clearly makes out a distinction between “any person” exercising jurisdiction under the Act and “a Civil Judge” invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Civil Courts Act. In our view, therefore, the judgment delivered by the learned Single judge of this Court in *Salimkhan's* case cannot be held to proceed on the correct proposition of law that a Civil judge invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Civil Courts Act, was also a Court of Small Causes, as defined under Section 4 of the Small Cause Courts Act. The said view is, therefore, overruled.

23. Section 26(1) of the Small Cause Courts Act speaks of the Court of Small Causes. If a Court of Small Causes means one defined under Section 4 and constituted under Section 5 of the said Act, does it mean that a Civil Judge invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Civil Courts Act shall have no jurisdiction to exercise powers of a Court of Small Causes under Section 26(1) of the Small Cause Courts Act. In our view, it cannot be so. Section 32 of the Small Cause Courts Act confers upon a Civil Judge with the jurisdiction of a Court of Small Causes available under Section 15 of the Small Causes Courts Act. In view of deletion of Entries No.4 and 8 from Second Schedule of the said Act, a bar to entertain, try and decide a suit for possession of the immovable property or for recovery of an

interest in such property or for recovery of rent, as was contained in Section 15(1) of the said Act, has been lifted. Therefore, in terms of Section 15(2) of the said Act, a Civil Judge invested with jurisdiction of the Court of Small Causes under Section 28(1) of the Civil Courts Act, which is an enactment for the time being in force, as specified therein, becomes competent to take cognizance of all such suits of a civil nature, of which the value does not exceed the pecuniary limit/restriction of jurisdiction specified under Section 28(1) of the Civil Courts Act and this would include the suit, as contemplated by Section 26(1) of the Small Cause Courts Act.

24. Section 28, as it stands, was incorporated in the year 1958 and at that time, the provision of Section 26 of the Small Cause Courts Act was not subsisting. It was introduced for the first time in the year 1984 by Maharashtra Act No.24 of 1984. There is no corresponding amendment in Section 28 of the Civil Courts Act introduced, after introduction of Section 26 of the Small Cause Courts Act. Hence, it is not possible to construe that Section 28(1) of the Civil Courts Act empowers the High Court to invest any Civil Judge with the jurisdiction of a Court of Small Causes for trial of suits, cognizable by such Court under Section 26(1) of the Small Cause Courts Act, for recovery of possession of immovable property, irrespective of the value of the subject matter of such suits. If it is assumed that the High Court has such power under Section 28 of the Civil Courts Act, then it shall violate the said provision itself, as the limit of pecuniary jurisdiction contained therein would become redundant. Hence, in our opinion, the provisions of Section 26(1) of the Small Cause Courts Act will have to be read down to the extent of pecuniary limit prescribed under Section 28(1) of the Civil Courts Act, in relation to the investiture of jurisdiction of a Court of Small Causes upon a Civil Judge. We, therefore, overrule the view taken in *Salimkhan's* case

that a Civil Judge invested with the powers of a Court of Small Causes under Section 28(1) of the Bombay Civil Courts Act, has jurisdiction to entertain and try the suits covered by Section 26 of the Small Cause Courts Act, irrespective of the value of the subject matter of such suits.

25. Shri Chandurkar, the learned counsel appearing for respondent No.2/landlady, has relied upon the following judgments :

(i) *Narayan Sitaram Mulay and others v. Bhagu Bin Ganga Ghanekar and others* – 1907 *The Indian Law Reports (Vol.XXXI) (Bombay Series)* 314.

(ii) *Sankararama Aiyar v. R. Padmanabha* – AIR 1916 Madras 891 (2).

(iii) *D.D. Vidyarthi v. Ram Pearey Lal* – AIR 1935 Allahabad 690.

(iv) *Medam Venkata Subbaramiah Setty v. K. Hari Rao* – AIR 1957 AP 133.

(v) *Devidas Mohanlal Gupta v. Ajesh Suresh Sarvaiyya* – 2007(1) *Mh.L.J.* 362.

(vi) *Smt. Savitribai and another v. Vithal Hari Petakar* – AIR 1981 *Bombay* 430.

(vii) *K. Kumaraswami Kumandan and Bros v. Premier Electric Co.* - AIR 1959 AP 3.

26. In the judgment of the Full Bench of this Court in *Narayan Sitaram Mulay and others v. Bhagu Bin Ganga Ghanekar and others*, reported in 1907 *The Indian Law Reports (Vol.XXXI) (Bombay Series)* 314, the question involved was whether a Court invested with Small Cause Court's powers is governed by para 1 or para 2 of

Section 203 of the Code of Civil Procedure. It was held that a Court invested with Small Cause Court's powers is governed by para 1 of Section 203 of the Code of Civil Procedure. The decision is not on the question where the value of the subject matter of the suits or proceedings exceeds the pecuniary limit of rupees twelve thousand or rupees six thousand, as the case may be, specified in Section 28(1) of the Code of Civil Procedure, whether a Civil Judge invested with the jurisdiction of the Court of Small Causes by the High Court for the trial of a suit cognizable by such Court, shall have the jurisdiction to try such a suit as summary suit in view of Section 22 of the Small Cause Courts Act or it has to be tried as regular suit in accordance with the Code of Civil Procedure. The said judgment is of, therefore, no help to respondent No.2.

27. The judgment of the Madras High Court in *Sankararama Aiyar v. R. Padmanabha*, reported in *AIR 1916 Madras 891 (2)*, decided the question whether an appeal lay to the District Court of Tinnevely from the judgment of the Additional District Munsif of Tinnevely in Original Suit No.132 of 1907. The judgment is essentially on the provision of sub-section (4) of Section 24 of the Code of Civil Procedure, which lays down that the Court trying any suit transferred or withdrawn under this Section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes. It was by deeming fiction, the Court to which a suit withdrawn from a Court of Small Causes is transferred, is to be treated as a Court of Small Causes. Such a deeming provision is absent either in Section 28(1) of the Civil Courts Act or in the Small Cause Courts Act. Hence, the decision of the Madras High

Court that the Court invested with the jurisdiction of a Court of Small Causes under Section 28 of the Madras Civil Courts Act also becomes a Court of Small Causes when a suit is transferred to it from the Court of Small Causes, is of no help to respondent No.2.

28. The judgment of the Allahabad High Court in *D.D. Vidyarthi v. Ram Pearey Lal*, reported in *AIR 1935 Allahabad 690*, is also on the provision of Section 24(4) of the Code of Civil Procedure and hence the same is also of no help to respondent No.2, in view of the distinction drawn above in respect of the decision of the Madras High Court in *Sankararama Aiyar v. R. Padmanabha*, reported in *AIR 1916 Madras 891 (2)*.

29. In the judgment of the Andhra Pradesh High Court in *Medam Venkata Subbaramiah Setty v. K. Hari Rao* reported in *AIR 1957 AP 133*, it has been held that where a suit of a small cause nature is filed as original suit in the District Munsif's Court, as at that time the subordinate Judge did not have small cause jurisdiction, but subsequently, the subordinate Judge is invested with small cause jurisdiction over the local limits of the District Munsif, the District Munsif continues to have jurisdiction to dispose of the suit as original suit and it should not be transferred to the subordinate Judge's Court to be decided by it in exercise of its small cause jurisdiction. It was held that Section 32(2) of the Provincial Small Cause Courts Act in terms is not comprehensive enough to take in a case where a suit was instituted in one Court and the jurisdiction of a Court of Small Causes was conferred on different Court. The decision is rendered on altogether different point and it is not on the question referred for the

decision of this Bench.

30. In the judgment of this Court in *Devidas Mohanlal Gupta v. Ajesh Suresh Sarvaiyya*, reported in *2007(1) Mh.L.J. 362*, the learned Single Judge was considering the provisions of Section 28 of the Bombay Civil Courts Act and Sections 32 and 33 of the Provincial Small Cause Courts Act with reference to the provisions of Section 33 of the Maharashtra Rent Control Act, 1999. It has been held that the jurisdiction of the Court of Civil Judge, Junior Division, invested with the jurisdiction of small cause under Section 28 of the Civil Courts Act by the High Court becomes a Court of Small Causes for the purposes of Provincial Act though it is not established as such under that Act. It was arising out of a small cause civil suit decided by the Civil Judge, Senior Division, Amravati, for possession filed under the provisions of Section 16(1)(c)(g) (k) and (n) of the Maharashtra Rent Control Act, 1999. The question involved was whether any distinction between the Court of Small Causes established under the Provincial Act and the Court functioning because of investing of such power under Section 28 of the Civil Courts Act, is recognized by the Rent Act. For this purpose, the provisions of Sections 32, 33 and 34 of the Maharashtra Rent Control Act were essentially relied upon. We here are not concerned with the provisions of the Maharashtra Rent Control Act, on the basis of which the said decision is rendered. Hence, the judgment is of no help to respondent No.2.

31. The judgment of this Court in *Smt. Savitribai and another v. Vithal Hari Petakar*, reported in *AIR 1981 Bombay 430*, has been rendered on the question of jurisdiction of the Court under Section 28 of the

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It was held that there being no Court of Civil Judge, Junior Division, at Kolhapur, it is the Court of Civil Judge, Senior Division, which has the jurisdiction to entertain and try the suit under Section 28 of the Rent Act. The question raised in the present case was not at all involved and considered in the said judgment.

32. In the judgment of the Andhra Pradesh High Court in *K. Kumaraswami Kumandan and Bros v. Premier Electric Co.*, reported in *AIR 1959 AP 3*, the question involved was the competency of the Provincial or State Legislatures to amend the Madras Civil Courts Act. It was held that there was no repugnancy between the material Sections of the Provincial Small Cause Courts Act and Section 28 of the Civil Courts Act. There was nothing unconstitutional in the amendment of Section 28 by the Amending Act. The said judgment is also of no help to respondent No.2.

33. From the provisions pointed out above and the discussion followed, it is clear that the Small Cause Courts Act deals with the jurisdiction therein to be exercised either by a Court of Small Causes established under Section 5 of the said Act or by a Civil Judge invested with the jurisdiction of a Court of Small Causes by the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act. If neither a Court of Small Causes is established at a particular place, nor has the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act invested any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts, then

obviously the ordinary original civil jurisdiction conferred upon the Civil Judge, Junior Division, or the Civil Judge, Senior Division, is available. However, in that event, such a suit, which is otherwise cognizable by a Court of Small Causes, would be tried by such Civil Judge as regular civil suit in accordance with the provisions of the Code of Civil Procedure, depending upon the pecuniary limits of its jurisdiction, as provided under Section 24 of the Civil Courts Act.

34. If a Court of Small Causes is established for a particular place or places, the ordinary original civil jurisdiction of a civil nature to be exercised by a Civil Court under the provisions of the Civil Courts Act stands excluded under Section 16 of the Small Cause Courts Act in respect of the jurisdiction of a Court of Small Causes for trial of suits and it is the Court of Small Causes, which shall have exclusive jurisdiction. This would naturally include the jurisdiction available under Section 26 of the Small Cause Courts Act and the practice and procedure for trial of such suits shall be governed by the provisions of Section 17 of the Small Cause Courts Act. The application of the provision for trial of regular civil suit contained in the Code of Civil Procedure is excluded to the extent provided for under the provisions of Section 7 read with the provisions of Order 50 of the Code of Civil Procedure, which make the procedure for trial of suits by a Court of Small Causes summary in nature. There is neither any ambiguity nor confusion or problem in respect of the jurisdiction to be exercised by a Court of Small Causes constituted under Section 5 of the said Act.

35. The question is about a Civil Judge exercising jurisdiction of a

Court of Small Causes for trial of such suits cognizable by such Court, invested in it by the High Court in exercise of its powers under Section 28(1) of the Civil Courts Act. Section 28(1) authorizes the High Court to invest any Civil Judge with the jurisdiction of a Court of Small Causes not exceeding rupees twelve thousand in case of a Civil Judge, Senior Division, and in case of a Civil Judge, Junior Division, rupees six thousand. We have already held that a Civil Judge invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Civil Courts Act shall have jurisdiction to entertain, try and decide the civil suits contemplated by Section 26(1) of the Small Cause Courts Act to the extent of the pecuniary limits prescribed under Section 28(1) of the Civil Courts Act. Section 32 of the Small Cause Courts Act states that so much of Chapters III, VI and IV-A1, as relate to the practice and procedure of the Courts of Small Causes, shall apply to the Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts. Similarly, the provisions of Section 7, read with the provisions of Order 50 of the Code of Civil Procedure, exclude the application of certain provisions of the Code of Civil Procedure to a Court invested with the jurisdiction of a Court of Small Causes. In view of this, the procedure to be followed for deciding such suits by a Civil Judge would be summary in nature and not as a regular civil suit to be tried in accordance with the provisions of the Code of Civil Procedure.

36. If the value of the subject matter of the suit covered by Section 26(1) of the Small Cause Courts Act exceeds the pecuniary limits specified under Section 28(1) of the Civil Courts Act, then a Civil Judge

invested with the jurisdiction of a Court of Small Causes shall not have jurisdiction to entertain, try and decide such suit, as a small cause suit of a summary nature, but it will have to be decided as a regular suit and the procedure for deciding such suit will be governed by the Code of Civil Procedure and not by the procedure prescribed under the Small Cause Courts Act. The reason for this is that the High Court is not competent under Section 28(1) of the Civil Courts Act to invest any Civil Judge with the jurisdiction of a Court of Small Causes beyond the pecuniary limits specified in that Section.

37. In view of the aforesaid discussion, we answer the question of law, referred for our decision, as under :

A Civil Judge invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Bombay Civil Courts Act can function as a Court of Small Causes to the extent of pecuniary limits prescribed under Section 28(1) of the Bombay Civil Courts Act and it shall not have jurisdiction to entertain, try and decide the suits covered by Section 26(1) of the Provincial Small Cause Courts Act, irrespective of the value of the subject matter of such suits.

38. The matter be accordingly placed before the learned Single Judge to decide it in accordance with law.

JUDGE

JUDGE

pdl.