

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 01.05.2014
Pronounced on : 01.10.2014

+ CRP 21/2014, CM APPLs 3661-3662/2014

ALLAHABAD BANK Petitioner

Through: Mr. C. Mukund with Mr. Ashok
Kr. Jain and Ms Ekta Bhasin
and Mr. Amit Kasera, Advs.

Versus

METAL BOX INDIA LIMITED Respondent

Through: Mr. Abhinav Vashistha, Sr.
Advocate with Ms. Sunita
Hansh and Ms. Malvika
Trivedi, Advs.

**CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI**

% **MR. JUSTICE NAJMI WAZIRI**

1. This petition under Article 227 of the Constitution of India seeks the setting aside of an order of the learned Trial Court dated 26.11.2013 in Civil Suit No. 140 of 2010. \it had dismissed the petitioner's (defendant's) application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) wanting rejection of the plaint.

2. The respondent/plaintiff had filed a suit for declaration and permanent injunction against the petitioner/defendant apropos the second floor of the building known as Allahabad Bank Building situated at 17, Parliament Street, New Delhi. The plaintiff's case was

that the defendant was disputing their rights and title in respect of the tenanted premises in the aforesaid property and was threatening them to invade into their legal rights. Hence, a declaration was sought to the effect that the plaintiff had remained the lessee/tenant in respect of the leased premises and furthermore, that nothing remained payable apropos the tenanted premises, etc.

3. The impugned order disposed off three applications filed by the parties: two filed by the plaintiff, one under Order 12 Rule 6 CPC and another under Order 13 Rule 10 CPC, while the application under Order 7 Rule 11 CPC had been filed by the defendant/bank. The Trial Court dismissed the plaintiff's application under Order 12 Rule 6 CPC since there was no clear and unambiguous admission by the defendants. Apropos the petitioner's/defendant's application under Order 7 Rule 11 CPC, seeking dismissal of the suit on the plea that it was barred under the Public Premises Act, 1971 (P.P. Act), the Court was of the view that, insofar as the possession of the premises had already been taken over by the defendant, an eviction order was not required under the PP Act, hence essentially the dispute was whether the claim of damages can be recovered under the said Act. The Trial Court reasoned that while the proceedings under the PP Act were with respect to damages, the suit had sought declaration to the fact that the plaintiff was a tenant till the time he had vacated the premises and indeed he had already paid the rent for the period they had occupied the premises, and all such dues had been paid after the date of handing over of possession of the tenanted premises. This amount have been

accepted by the defendant/bank without any protest or demur. The Court treated the issue as a mixed question of law and facts and was of the view that prima facie there was no other forum to decide the controversy. Hence, it did not deem it appropriate to dismiss the suit summarily. The Court referred to the dicta of this Court in ***Swaran Singh v. Surinder Kumar*** 2011 (179) DLT 136 which held that “when issues have been framed the powers under Order 7 Rule 11 CPC should be used sparingly.” Since issues had already been framed in the case, the Trial Court in view of the aforesaid reasoning had dismissed the defendant’s application under Order 7 Rule 11 CPC. The Court was of the view that it could not be said that the plaint did not disclose any cause of action.

4. Mr. C. Mukund, the learned counsel for the petitioner contends that the proceedings under Section 7 the PP Act had started much earlier in time and the subsequent civil suit was deliberately devoid of vital facts. He contends that the suit did not disclose the correct facts regarding the pendency of the proceedings under the Act and the interim stay of the PP Act proceedings was by concealment of pendency of such proceeding. The earlier PP Act proceedings initiated by the defendant had claimed the following reliefs:

“(a) necessary orders be passed by the Ld. Estate Officer for payment as stated hereunder:-

- (i) Direction be issued upon the defendants to pay the arrear lease rent and service charges in respect of the suit premises till 31.03.1994 being the sum of Rs.16,16,604/- as per the statement enclosed;

- (ii) Direction be issued upon the defendant to pay damages to be calculated @ Rs. 2,63,865.60p only per month inclusive of service charges for the period from 1.4.94 till 31.7.06 as stated above this amount comes to Rs.3,77,95,988/- as on 31.7.06.
- (iii) Direction be also issued upon the defendant to pay damages to be calculated @ Rs.115/- per square feet per month excluding the electricity and water charges as stated above from 1.8.06 till 10.12.2007 i.e. Rs.10,53,630/- p.m.
- (iv) Direction be also issued upon the defendant to pay the electricity and water charges being the aggregate sum of Rs.72,06,255/- till 10.12.2007 as stated above;
- (v) Direction be issued upon the defendant to pay interest to be calculated @ 18% monthly rests on the damages/mesne profit as well as on future mesne profits and on such charges and claims from August 1993 till payment is made;

(b) Further damages on account of use and occupation of the premises by the defendant be also passed;”

5. The learned counsel submits that the Trial Court was not competent to entertain the suit in view of the bar under Section 15 of the Public Premises Act to jurisdiction of civil courts in respect of (i) eviction of a person who is in unauthorised occupation of any public premises and (ii) to claim of damages payable for occupation of the public premises. He further submitted that although the tenancy started sometimes in 1965, the lease tenure was renewed from time to time. Later the parties contracted Lease Deed on 18th April 1990, the

initial and the extended tenure (as sought by the plaintiff/tenant in their suit for specific performance) got over by efflux of time in 1998-1999. He submitted that this lease too got over by efflux of time in 1994. The interim injunction in the plaintiff's said suit (No. 1433 of 1994) restraining the bank from taking steps to evict the respondent was vacated in 2006. The injunction was vacated on 22.07.2006 by the Trial Court which observed that the defendant bank was competent to invoke the provisions of the PP Act against the plaintiff for recovery of possession of the suit property. The eviction proceedings were started on 09.10.2006. The respondent sought prohibitory orders against the bank. The writ petition filed before this Court from proceedings with the eviction case. The writ petition was disposed off with certain directions on 10.01.2007. The respondent's LPA against the said order was disposed off when it was observed that the eviction case should proceed. On 20.2.07 the petitioner bank sought the relief of damages under section 7 of the PP Act. Thereafter four petitions were filed before this Court by the workers' union of the company seeking quashing of the eviction petition. Subsequently on 10.12.2007, the respondent intimated they were no longer interested in keeping the possession of the premises and were delivering vacant possession of the same. While disposing off two writ petitions on 13.12.07, this Court observed that since the premises had been handed over to the bank, the proceedings under Section 4 of the PP Act would not survive. However, this Court observed *'these writ petitions have also become infructuous. They are disposed of as such. This order is without prejudice to the other rights of the parties that they may have*

under the PP Act, 1971 and Sick Industrial Companies (Special Provisions) Act, 1985. However, soon thereafter the respondent/tenant filed the suit for declaration and injunction (No.143/2008 in which the impugned order was passed). It is submitted that in the petitioner's proceedings in the P.P. Act, a Section 7 notice was issued for 10.04.2008. To subvert the PP Act proceedings the respondent on 05.04.2008, moved an application before the BIFR seeking reliefs relating to arrears of damages without making petitioner bank a party to the said proceeding. Four days later on 9.4.08, the aforesaid suit was filed by the respondent. The learned counsel submits that their WS was filed along with the application under Order 7 Rule 11 CPC and an application under Order 39 Rule 4 CPC. Thereafter, the respondent started filing applications under Order 6 Rule 7 CPC for amendment of the plaint. Two such amendments were allowed in succession and when the application under Order 7 Rule 11 CPC was pressed the respondent filed the application under Order 12 Rule 6 CPC for decree on admissions.

6. The learned counsel submits that the suit is without jurisdiction and is not maintainable before the Trial Court; that the petitioner bank had at every stage pressed its application under Order 7 Rule 11, but it was not being taken up; that its dismissal in a mechanical manner cannot be sustained in law. The counsel further submits that the Trial Court failed to exercise the vested right in it by law by not rejecting the plaint, because the proceedings initiated earlier in time by the petitioner/defendant under the PP Act were not only with respect to

the eviction of the respondent but also claimed payment of damages for over stay etc; that the Trial Court erred in not finding that the Estate Officer was in seisin of the issue as to what were the rights of the respondent after 31.03.1994 i.e. after expiry of the first tenure of the lease agreement dated 18.04.1990 and whether the tenant had paid the rent or not or whether any amount had been paid in excess or whether the possession was taken without protest. Since all these issues were pending before the Estate Officer, learned counsel for the petitioner submits, the Civil Court had no jurisdiction. He further contends that the suit ought to have been rejected because it suppressed and concealed the facts. He relied upon the following judgments: **(1977) 4 SCC 467 (T. Arvindam vs. T.V. Satyapal & Anr.) (1994) 1 SCC 1 (S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs and Ors.); (2010) 8 SCC 383 (Meghmala & Ors. V. G. Narasimha Reddy & Ors.); and (2012) 1 SCC 476 (Union of India & Ors. V. Ramesh Gandhi).**

7. The learned counsel submits that the petitioner bank is not precluded from raising a claim or demand for damages under the PP Act. Therefore, no civil court can question the exercise of such right. He submits that the respondent ought to have disclosed the correct fact both before the BIFR as well as Civil Court which they have deliberately not done.

8. In reply Mr. Abhinav Vashistha, learned Sr. Advocate for the respondent submits that the issues were framed on 5.9.2013 and the bank participated in leading evidence. The application under Order 7

Rule 11 CPC was dismissed on 26.11.2013; plaintiff's evidence was recorded on 09.12.2013; he was cross examined by the defendant on 4.2.2014 but in the interim this revision petition had been filed in January 2014. He submitted that in a case of highly disputed question of facts the matter ought to be decided by a Civil Court. He relied upon a judgment of this Court in *Satish Chandra Sanwalka v. Tinplate Dealers Association Pvt. Ltd.* (2012) 5 AD (Delhi) 657 in support of his arguments. The said judgment held that where the jurisdiction of the Company Court under Section 155 of the Act and of the Civil Court under Section 9 of CPC were concurrent, in a highly disputed questions of fact the case ought to be decided by the Civil Court and not by the Company Law Board. Hence, the learned Senior Advocate submits it is preferable that highly disputed questions of fact such as those in the present case, ought to be decided by the Civil Court. He further submitted that PP Act would not be applicable in the present case since the tenancy started in 1965 i.e. prior to the petitioner/bank becoming a government company. He submits that the petitioner bank got nationalised only after the enactment of The Banking Companies (Acquisition and Transfer of Undertakings Act, 1970). Furthermore, Public Premises Act too came into effect only after 1970 therefore, the subsequent statutes would not in any way, affect the rights of the tenant which would otherwise be governed under the Transfer of Property Act in particular, under Section 106 thereof. He relied upon the case of *Dr. Suhas H. Pophale vs. Oriental Insurance Co. Ltd. And its Estate Officer 2014 (2) SCALE* which held as under:

“44. In Ashoka Marketing (supra), this Court was concerned with the premises of two Nationalised Banks and the Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act from 16.9.1958, i.e the date from which the Act is brought into force. As far as Nationalised Banks are concerned, their nationalization is governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of Public Premises Act to the premises of the Nationalised Banks will be from the particular date in the year 1970 or thereafter. For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the concerned premises become the public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the concerned General Insurance Companies like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in “unauthorised occupation”. Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Control Act, 1999. If person concerned has come in occupation

subsequent to such date, then of course the Public Premises Act, 1971 will apply.

45. It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between the respondent No. 1, the other General Insurance Companies, LIC, Nationalised Banks and such other Government Companies or Corporations, on the one hand and their occupants/licencees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in paragraph 66 of Ashoka Marketing. We must remember that the occupants of these properties were earlier tenants of the erstwhile Insurance Companies which were the private landlords. They have not chosen to be the tenants of the Government Companies. Their status as occupants of the Public Insurance Companies has been thrust upon them by the Public Premises Act.”

9. Having considered the aforesaid, this Court is of the view that the orders in the writ petition were limited only to the vacation of the premises under section 4 of the PP Act. It reserved the rights of the petitioner bank to pursue their claims as may be available under the Act. Furthermore, the suit did not fully disclose the fact of the pendency of proceedings seeking damages which was filed earlier in

time and which ought to have been so disclosed in the suit as well as in the proceedings before the BIFR where, the petitioner-Bank was not impleaded. Although the WS had been filed, the application under Order 7 Rule 11, which was filed along with it was not taken up by the Court any time prior to the framing of the issues and to recording of evidence. If the Court did not decide the Order 7 Rule 11 application earlier the petitioner applicant cannot be faulted for it. The developments in the suit during the pendency of the application questioning the very maintainability of the suit will not legitimate to it nor confer jurisdiction upon a civil court which is otherwise barred under Section 15 of the PP Act. Relevant portion of Section 15 of the PP Act reads as under:

“15. Bar of jurisdiction. No court shall have jurisdiction to entertain any suit or proceeding in respect of--

(e) the recovery of--

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.”(emphasis supplied)

10. It is settled law that jurisdiction is a fundamental issue which needs to be determined before any forum can proceed to entertain an application. In the absence of jurisdiction, the entire proceeding would be *non est* in law. This Court in RFA (OS) No.6/1993 titled **DDA v. Naresh Kumar & Ors.** decided on 30.9.2013, has held that in view of the clear bar to any court having jurisdiction to entertain any

suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of the public premises, the learned Single Judge had no jurisdiction to proceed with the suit and pass the judgment and decree. The Supreme Court in *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791 on the issue of invalidity/illegitimacy of the proceedings due to lack of jurisdiction has held:

“It is well settled and needs no authority that “where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing”. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice”

11. Whether the tenancy was to be construed as a continuance of the 1965 tenancy or a fresh one as per the 1990 lease deed whereby it would be undeniably deemed to be ‘public premises’ under Section 2(e) of the PP Act were issues that could have been determined by the Estate Officer. This Court is of the view that the Trial Court had no jurisdiction to proceed with the suit because it lacked jurisdiction. Insofar as the parties had agreed to a fresh lease agreement in 1990, they would be bound by the same. Indeed, the tenanted had sought specific performance of the same. This agreement was executed after the coming into effect of the Public Premises Act. Therefore it would be covered under the said Act. Hence, it could not be in continuation of the old tenancy initiated in 1965. The respondent tenant had chosen to become a tenant of a public bank i.e. an entity described and

covered in Section 2 of the Act since it is established under the Bank Nationalisation Act. Therefore, the bar under Section 15 of the PP Act would come into operation.

12. In view of the aforesaid, this Court is of the view that the impugned order suffers from material irregularity and ought to be set aside. Accordingly, the impugned order is quashed. Consequently, the plaint is rejected. No orders as to costs.

**NAJMI WAZIRI
(JUDGE)**

OCTOBER 01, 2014/acm