



Diksha Rane

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 84/2025

HARAKCHAND RAVJI SHAH AND OTHERS ..APPLICANTS

VS

CHANDRAKANT KANTILAL BOTADKAR & ORS. ..RESPONDENTS

WITH

MISC. CIVIL APPLICATION NO. 455/2025

URMILA PRAVIN MORABIA ..APPLICANT

VS

CHANDRAKANT K BOTADKAR ..RESPONDENT

Mr. Chirag Mody a/w Ms. Sonal Awasthi a/w Ronish Mehta a/w
Ishvendra Tiwari i/by Vinod Mistry and Co. for Applicants.

Mr. A. S. Khandeparkar, Senior Advocate a/w Swati Narvekar a/w
Sudarshan Bhilare a/w Rushikesh G. Bhagat for Respondents.

CORAM : RAJESH S. PATIL, J.
RESERVED ON : 11 FEBRUARY 2026
PRONOUNCED ON : 25 AUGUST 2026

JUDGMENT :

1) By the present transfer application, filed u/s. 24 of the Code of Civil Procedure (for short “C.P.C.”) the applicants are seeking transfer of eight eviction suits filed by the respondent no.1 to 3, as landlords in the Small Causes Court at Mumbai, to be transferred to the Bombay City Civil Court at Bombay and to be tagged along with applicants’ suit for specific performance pending before Bombay City Civil Court.

FACTS

2) The applicants herein on 12 August 2015 filed a suit for specific performance of MOU in this Hon’ble High Court. Subsequently the defendants in the said suit claiming to be landlords filed eight eviction suits against the applicants and other occupants of the building before the Small Causes Court, at Bombay, in the month of April 2022.

2.1) Due to change in the pecuniary jurisdiction of the Bombay City Civil Court, the suit filed by the applicants before the Bombay High Court were transferred in the year 2024 to the Bombay City Civil Court. The issues have not been framed in the suit pending before Bombay City Civil Court. Issues have been also framed in the

Small Causes Court suits. Thereafter, the present miscellaneous civil applications u/s. 24 of the C.P.C. have been filed by the applicants who are the plaintiffs in the suit filed for specific performance, pending before the Bombay City Civil Court, at Bombay.

3) On behalf of the applicants Mr. Chirag Mody appeared and made his submissions.

3.1) He submitted that there was a Memorandum of Understanding (MOU) entered in the month of October 2002 between the present applicants along with respondent nos.4 to 21 on One Side and the respondent nos.1 to 3 (landlords) on the Other Side, pursuant to which the revisionary rights were to be sold and tenancy rights were to be converted into Ownership rights. Part consideration amount of Rs.3,20,000/- pursuant to the MOU was paid to respondent nos. 1 to 3 and the outstanding amount of Rs.15 lakhs were to be paid after the respondent nos.1 to 3 complies with the directions as stated in the MOU.

3.2) As regards the premises no.7, the Deed of Conversion, for ownership was entered into and the rights were transferred. Hence, what was expected from the respondent nos.1 to 3-landlords, like premises no.7, Deed of Conversion will also be entered into with

applicants.

3.3) After entering into the MOU in the year 2002, the respondent nos.1 to 3 stopped collecting rent from the applicants and the other tenants/occupants of the building.

3.4) All the expenses of the said building in which the premises of the applicants and other tenants were situated after the year 2002 are being paid from the bank account of the Association of the applicants and the other members. Even the Municipal Taxes of the building are paid by the said Association.

3.5) Since the respondent nos. 1 to 3 – Landlords were not cooperating and were not ready to comply with the clauses of the MOU, the applicants had no option but to file suit for specific performance in the Bombay High Court in the year 2015. The said suit eventually was transferred to the Bombay City Civil Court, due to the change in the pecuniary jurisdiction of the Bombay City Civil Court, pursuant to the amendment to the Bombay City Civil Court Act. After the said suit was transferred to the Bombay City Civil Court, the Chamber Summons has been moved for transposing the defendant nos. 4 to 25 as party plaintiff.

3.6) In the meanwhile, the respondent nos.1 to 3 being the

landlords of the suit building surreptitiously filed eight eviction suits under the Maharashtra Rent control Act,1999, against the applicants/tenants on the ground of additions and alterations, bonafide requirement and arrears of rent.

3.7) The parties to the specific performance suit filed by the applicants and the eviction suits filed by respondent nos.1 to 3 are almost common. The evidence in eight suits filed for eviction before the Small Causes Court and the suit for specific performance filed by the applicants are almost common and the issues would also be common. Further, in order to avoid conflicting judgments in the suit pending before the Bombay City Civil Court for the specific performance by the applicants and the eviction suits filed by the respondent no.1 before the Small Causes Court, Mumbai, both the suits need to be heard by the one and same judge. There will also be duplicate of evidence being led and waste of time.

3.8) Therefore, the eviction suits filed before the Small Causes Court needs to be transferred to the Bombay City Civil Court and be tagged along with the suit filed by the applicants and be heard together.

3.9) The provisions of Section 24 (4) of the Code of Civil

Procedure are quite clear that the suit of the Small Causes Court can be transferred to the Civil Court, and the Civil Court will be treated as a Court of Small Causes for that suit.

3.10) He submitted that Section 8 of the Code of Civil Procedure should be seen first and thereafter, Section 24. He submitted that u/s. 8 there is a saviour clause, as far as Section 24 is concerned. He further emphasizes the definition of the word “district” u/s.2(4) of the C.P.C.

3.11) He further referred to Clause 13 of the Letters Patent. He submitted that u/s.24(4) once a suit is transferred to a Civil Court under the said sub-section from a Court of Small Causes for the purpose of such suit the said Court would be deemed to be a Court of Small Causes.

3.12) Therefore, the present Misc. Civil Application needs to be allowed and the subsequent suits filed before Small Causes Court needs to be transferred to Bombay City Civil Court.

3.13) Mr. Mody also relied upon the following judgments to support his contention:

(a) *Ranchhodlal Vallabhdas Vs. Mahendrakumar Ambalal*¹;

1 1956 SCC OnLine Bom 40

- (b) Balmukund Ratanlal Ladda Vs. Sitaram²;*
- (c) Ulhas Harishchandra Dhargalkar Vs. Padmakar Vasant Desai & anr.³;*
- (d) Krishna Kumar Damani Vs. Ramnarain Agarwal⁴;*
- (e) M. Alwar Vs. Hindustan Petroleum Corporation Ltd.⁵;*
- (f) Maganlal Vijbhukandas Vs. The Bombay Co. Limited⁶;*
- (g) Vithoba Vs. Karim⁷;*
- (h) Parshottamdas Chunilal Shah Vs. Bhagubhai Nathubhai (Division Bench)⁸;*
- (i) Export Credit Guarantee Corporation Vs. Annama Philips⁹;*
- (j) Chitivalas Jute Mills Vs. Rewa Cement¹⁰;*
- (k) Bababhai Jamnadas Vs. Jaisingh Mariwala¹¹;*
- (l) Ahim Mitter Vs. Kamal Kumar Chaudhary¹²;*
- (m) Rahul Bothra Vs. Karjala Naidu¹³.*

4. In response, learned senior counsel Mr.Khandeparkar appeared on behalf of the respondent nos. 1 to 3 (landlords) and made his submissions as under :

4.1 He submitted that the wordings of Section 24 (1)(a) of the Code of Civil Procedure needs to be taken into consideration. He emphasizes on the word “competent” as mentioned in Section 24 (1)

2 2015 SCC OnLine Bom 486

3 2021 SCC OnLine Bom 13813

4 1983 SCC OnLine Cal 158

5 2010(2) MWN (Civil) 500.

6 1904 [Vo.VII] Bombay Law Reporter 143.

7 AIR 1932 Nag 49.

8 1932 Vo. LVI Bombay Series 387.

9 2010(5) Mh.L.J.659 (Full Bench)

10 (2004) 3 SCC 85.

11 Order dtd.6/7/2015 in NML/472/2015 in Suit No.3734/1996.

12 2020 SCC Online Cal 331.

13 2021 (3) Mh.L.J. 11

(a). He further submitted that therefore, before transferring a suit to a particular Court that Court needs to be competent to try the suit.

4.2 He thereafter pointed out Section 33 of the Maharashtra Rent Control Act, and submitted that the said Section 33 is to be divided into three parts for the purpose of jurisdiction. Part – A according to him, deals with suits filed which has jurisdiction for Mumbai city. The second part deals with cities in which the Small Causes Court are established under the Provisional Small Causes Court Act and the third being the suit in the places where Maharashtra Rent Control Act is applicable, and the matters are to be dealt with by the Civil Judge Junior Division.

4.3 He laid emphasis on sub-section (2) of Section 33, which does not mention about Section 33(1)(a) which deals with the suits of eviction filed for the premises situated within the city of Greater Mumbai. He therefore submitted that there is a difference between the suits which are filed before the Small Causes Court, Mumbai, where the properties are situated in Mumbai, and the rest of Maharashtra.

4.4 He submitted that Section 24(4) will be applicable to suits pertaining to Section 33(2)(a) of the Maharashtra Rent Control

Act, i.e. places where Provisional Small Causes Court Act is applicable.

4.5 He further lays his emphasis on the preamble of the Presidency Small Causes Court Act and compared the same with preamble of the Provisional Small Causes Court Act.

4.6 He also referred to Section 5 of the Presidency Small Causes Court Act and thereafter, compared the same with Section 5 of the Provisional Small Causes Court Act.

4.7 He referred to the judgment of learned Single Judge of this Court in *Rahul Bothra vs. Karjala Naidu, 2021 (3) Mh.L.J. 11*. He submitted that this judgment is referred to emphasis the point that the prayer which can be granted by the Small Causes Court cannot be granted by the Civil Court.

4.8 He therefore submitted that on the threshold the present transfer application cannot be allowed as the jurisdiction of Small Causes Court to decide the matters under the Rent Act cannot be transferred to Civil Court to decide the said reliefs.

4.9 He submitted that one has to see Section 24 (1) (a) which allows the transfer of any such suit, appeal or other proceeding pending before the High Court or the District Court for trial or

disposal to any Court subordinate to it and “competent” to try and dispose of the same. Therefore, according to him, though the power of transfer is there, the Court to which the transfer is made should be “competent” to try and dispose of the suit.

4.10 He further submitted that as per sub-section (b) of Section 24(1), the High Court or the District Court has power to withdraw any suit and try or dispose of the same itself. He submitted that as per sub-section (ii) of Section 24(1)(b), the suit can be transferred to any Court subordinate to the High Court and should be “competent” to try. Further, considering Section 33 of the Maharashtra Rent Control Act, sub-section (1)(c), which deals with the jurisdiction of the Court, the Civil Judge Junior Division will have jurisdiction to entertain and try any suit between landlord and tenant for possession or recovery of the rent.

4.11 He submitted that by consent of the parties, the jurisdiction would not lie to a particular Court.

4.12 He submitted that for instance, if a jurisdiction is conferred on the Co-operative Court to decide particular kinds of matter, it cannot be said that u/s. 24 such proceedings would be transferred from the Co-operative Court to any Civil Court.

4.13 The jurisdiction of Court under the Maharashtra Rent Control Act, is provided under Section 33 stating therein that if the premises is in Mumbai, it would be the Court of Small Causes Court, Mumbai under sub-section (a) and further the area in which the Court of Small Causes Court shall be Provincial Small Causes Court Act, sub-section (b) and elsewhere the Court of Civil Judge, Junior Division, having jurisdiction in which the premises is situated as per sub-section (c).

4.14 He submitted that u/s. 33 of the Maharashtra Rent Control Act, the jurisdiction in the city of Greater Mumbai, to hear the matter is granted to the Small Causes Court as per sub-section (a) and as per sub-section (b) in the area where the Small Causes is established under the Provincial Small Causes Court Act and in sub-section (b), in any area wherein the Court of Small Causes is established under the Provincial Small Causes Court Act to such Court, and elsewhere to the Civil Judge, Junior Division and if there is no such Court available then to the Civil Judge, Senior Division. Sub-section (2) (a) of Section 33 mentions that notwithstanding anything contained in clause (b) of sub-section (1) *the District Court*, may at any stage withdraw any suit pending in the Court of the Small Causes established under the Provincial Small Causes Court Act and

transfer the same to the Civil Judge, Senior Division.

4.15 Further sub-section (c) of sub-section (2) mentions that such Civil Judge who hears the matter as per clause (a) which has been transferred from the Court of Small Causes shall for such purpose of suit would be deemed to be the Court of Small Causes.

4.16 Mr. Khandeparkar, to buttress his submissions relied upon the following judgments.

- (a) *Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale*¹⁴;
- (b) *Narhari Kanda Vs. Heren Damji Gala*¹⁵;
- (c) *Rahul Subhash Bothra Vs. Karjala Ashalata Naidu*¹⁶.

5. ANALYSIS AND CONCLUSION:-

5.1 In the present application filed u/s. 24 and 151 of C.P.C. transfer has been sought of eight eviction suits filed under Maharashtra Rent Control Act, pending before Small Causes Court, to be transferred to the Bombay City Civil Court, at Bombay and to be heard along with suit for Specific Performance pending before the Bombay City Civil Court, at Bombay. Since the respondents have raised an objection, that such a transfer is not permitted in law. Two

14 (1995) 2 SCC 665

15 2024 SCC OnLine Bom 1933

16 2021 (3) Mh.L.J.11.

questions arise, first whether such a transfer is permitted and if yes, then whether in present proceedings on merits transfer application should be allowed.

5.2 Section 24 of the C.P.C. only lays down general power of transfer and withdrawal by a High Court or by a District Court. It does not mention particular grounds on which a transfer can be allowed.

5.3 In order to consolidate the law relating to the Courts of Small Causes beyond the Presidency-towns, the Provincial Small Causes Court Act, 1887 was enacted. It applies to the whole of India, however, it is not applicable to the areas to which the Presidency Small Causes Court Act, 1882, is applicable, which area includes the city of Calcutta, Madras and Bombay. The suit premises is situated in the city of Mumbai, formerly known as Bombay. Hence, as far as Greater Bombay is concerned, what is applicable to the area is the Presidency Small Causes Court Act, 1882.

5.4 Section 8 of the C.P.C. reads as under :

8. Presidency Small Causes Courts. - Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76 [77, 157 and 158], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:

Provided that -

(1) the High Courts of Judicature of Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, direct that any such provisions of inconsistent with the express provisions of the Presidency Small Causes Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;

(2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882), shall be deemed to have been validly made.]

5.5 Therefore, as per section 8 of the C.P.C., section 24 of the C.P.C. would apply to the proceedings which fall under the Presidency Small Cause Courts Act, 1882.

5.6 Section 3 of the City Civil Court's Act defines constitution of the Bombay City Court, which states that the State Government may by notification in the official gazette establish for Greater Bombay a Court to be called as Bombay City Civil Court. Notwithstanding anything contained in any law, such courts shall have jurisdiction to receive and try and dispose of all suits of a civil nature and at present not exceeding Rs.10 crore in value, arising within the Greater Bombay, except suits or proceedings which are cognizable by High Court in its admiralty jurisdiction, High Court as a relief for insolvent debtors, or High Court under any special law other than Letters Patent, or High Court under the Parsi Marriage and

Divorce Act, or High Court in respect of IPR matters, and the suits to be decided specifically by the Small Causes Court.

5.7 Therefore, the City of Bombay does not have a Civil Court called as Civil Judge Junior Division and Civil Judge Senior Division.

5.8 Sub-section (2) of section 33 of the Maharashtra Rent Control Act, mentions in clause (a) that notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit or proceedings pending before Small Causes Court established for any area under the Provincial Small Causes Court Act and transfer the same for trial or disposal to the Court of Civil Judge Senior Division having ordinary jurisdiction in such area.

5.9 Section 33 (2)(a) of the Maharashtra Rent Control Act and erstwhile Section 28(2)(a) of the Bombay Rent Act gives power to a District Court to transfer a suit from Small Causes Court to Civil Judge Senior Division. In the City of Bombay, there is no Senior Division Court, and the District Court for the City of Bombay would be the Bombay City Civil Court. Therefore, in Greater Bombay there will be no question of a transfer of a suit filed before Small Cause

Court under the provision of Section 33(2)(a) of the Maharashtra Rent Control Act, to the Civil Judge Senior Division. Therefore, the only way to seek a transfer of a suit filed in Small Causes Court to a Civil Court in the City of Bombay would be by way of an application under Section 24 of C.P.C.

5.10 Section 3 of the C.P.C. defines the subordination of Courts, where it has been stated that a District Court is subordinate to a High Court and every Civil Court of a grade inferior to that of a District Court and also a Court of Small Causes, are subordinate to the High Court.

5.11 Section 24 deals with all kinds of suits to be transferred. Section 24 (4) states that any suit transferred from the Court of Small Causes to any other Court would be deemed to be a Court of Small Causes. Section 24(4) of C.P.C. reads as under:-

“S.24(4)- 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.”

5.12 In *Ulhas Harishchandra Dhargalkar* (supra), Single Judge of this Court dealing with identical facts where transfer was sought of suit pending in Small Causes Court to Bombay City Civil

Court, where defendant's suit for specific performance was pending. The Single Judge considered Section 24(4) of C.P.C. and Section 8 of C.P.C., and allowed the transfer application. I am in agreement with the law laid down in ***Ulhas Harishchandra Dhargalkar*** (supra).

5.13 Similar view has been taken by Single Judge of Madras High Court in ***M. Alwar*** (supra).

5.14 In ***Maganlal Vijbhukandas*** (supra), way back in 1904, Single Judge of this court while considering Clause 13 of Letters Patent held that in appropriate matter Small Causes suit can be transferred to High Court.

5.15 Likewise in ***Vithoba*** (supra) in the year 1931, while considering the provisions of Section 24 of C.P.C. transferred suit from Small Causes Court to the regular Court of sub-ordinate judge, where applicant's suit was pending. Setting aside the District Court order which held that he had power to transfer the case, but refused to transfer the application on the ground that transfer of suit would involve difficulties, the Court agreed with District Court that under Section 24 of C.P.C. the Courts had powers to transfer and its opinion transfer is desirable and the Court to which the case is transferred, will be deemed to be a Court of Small Causes competent to try the

case in that capacity.

5.16 In the same way Division Bench of this Court in ***Parshottamdas Chunilal Shah*** (supra) held that Section 24(1) of C.P.c. gives power to High Court or District Court to transfer a suit from Small Causes to a regular Court, and sub-section (4) of Section 24, lays down that any case transferred from a Small Causes to a regular Court, shall be tried as a Small Causes suit.

5.17 Full Bench of this Court in ***Annama Philips*** (supra) to the reference of Question of Law, held that the provisions of section 41(b) of the Specific Relief Act, the Small Causes Court constituted under the Presidency Small Causes Court Act is sub-ordinate to the Bombay High Court.

5.18 Supreme Court in ***Chitivalas Jute Mills*** (supra), under Section 25 of the C.P.C. transferred suit filed for recovery at Rewa, Madhya Pradesh to Visakhapatnam, Andhra Pradesh, where suit for goods sold and delivered was pending. Supreme Court held that consolidation of trial, the parties will be relieved of the need to adduce the same or similar evidence. There will be common argument and common judgment.

5.19 Single Judge of this Court in ***Bababhai Jamnadas*** (supra)

clubbed two suits, one where the owners claim possession from purported trespassers and the other whether the same purported trespassers, as agreement tenants claim to be entitled to exclusive possession.

5.20 Division Bench of this Court in *Ranchhodlal Vallabhdas* (supra) were considering the provisions of the Provincial Small Causes Court Act.

5.21 In *Eknath Vithal Ogale* (supra), Supreme Court decided the issue that a suit by a licensee against a licensor, who is said to be threatening to disturb the possession of the licensee without following due process of law, is cognizable by Court of Small Causes as per Section 41(1) of the Presidency Small Causes Court Act, 1882. The ration laid down in this judgment does not help the respondent, who claims to be landlord in the present proceedings.

5.22 *Narhari Kanda* (supra), judgment delivered by me dealt with the issue of tenancy coming to an end only by eviction decree or by surrender of tenancy by tenant in favour of landlord. The conclusion arrived at does not help the respondents in the present proceedings.

5.23 In *Rahul Bothra* (supra), Single Judge of this Court was

dealing with order passed by Civil Judge Junior Division, allowing application filed by defendant u/s.10 of C.P.C. for stay of suit. There is no discussion of Section 24 of C.P.C., since the same was not involved. Hence, the judgment does not help the respondent herein.

5.24 Therefore, in my view, even in the City of Bombay, a suit from Small Causes Court can be transferred to a Civil Court in Mumbai which will be the Bombay City Civil Court.

Whether on merits transfer application filed u/s.24 and 151 of C.P.C. should be allowed

6. In the present proceedings, it is the case of the respondent Nos.1 to 3 that they are the landlords of the suit building. There was an MOU between them and the applicant with other occupants of the building. A part of the payment was made by the applicants which is admitted by the applicants. The MOU was signed to that effect. However, as the parties did not proceed further, the applicants filed a suit for declaration and specific performance against respondent nos. 1, 2 and 3.

6.1 If one considers a situation where, both the suits are not clubbed together and the suit for specific performance filed by the tenant is decreed in favour of the tenant for specific performance,

then the tenant will become a owner/landlord, and there cannot be a eviction suit against such a landlord, and in another situation if eviction suit filed by the landlord is tried and decreed first in favor of the landlord and subsequently the Bombay City Civil Court decrees the specific performance suit in favour of tenant and declares them as owners of the suit property. Then there will be two conflicting decrees in the field.

6.2 In both the suits parties are common. Both suits relate to same premises. Matter in dispute will not be really decided until both the suits terminate. If both the suits are clubbed together, then there will be advantage to the Judge, who will hear these proceedings, to decide both the issues simultaneously. The parties would be relieved of the need of adducing the same or similar documentary and oral evidence twice at two different trials. Hence, both M.C.As. need to be allowed.

ORDER

(a) M.C.A.No.84 of 2025 and M.C.A.No.455 of 2025, stand **allowed** in terms of prayer clause (a).

(b) For the suits which are transferred, the Bombay City Civil Court will be deemed to be Small Causes Court, competent to try the suits in that capacity.

(c) The proceedings of Small Causes suits be transferred within four weeks to Bombay City Civil Court and be clubbed with Suit No.2804 of 2024. The hearing of these suits is expedited. Both the parties to co-operate in early hearing of the suits.

(Rajesh S. Patil, J.)