

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7495 OF 2014

M/s.Western India Oil Distributors Co.Ltd. & anr.... Petitioners

v/s

Pravinkumar Jethalal Dave

... Respondent

Mr.PN. Patwardhan along with Kantilal Kanojia and Mayur Sonawane for the petitioners.

Mr.Satyan N. Vaishnav along with Ms.Nupur Mukherjee and Anil Chauhan i/by N.N. Vaishnava for the respondent.

CORAM: N. M. JAMDAR, J.

DATED : 13TH APRIL, 2015

ORAL ORDER:

By this writ petition, the petitioners challenge the order passed by the Small Causes Court, Mumbai, dated 1 February 2013 and the Appellate Bench of the Small Causes Court, Mumbai, dated 7 April 2014, rejecting the application dated 28 March 2012 filed by the petitioners under Order XV Rule 3 of Code of Civil Procedure, 1908.

2 The petitioner is a Tenant of the premises. The respondent has filed the suit bearing No.419/607 of 2003 in the Small Causes Court, Mumbai. It is the contention of the petitioner that the respondent is not the Landlord of the premises. It is the contention of the petitioner that, on the basis of the application and the evidence led, it can be seen that the respondent is not the Landlord

and no purpose will be served by continuing with the trial and accordingly under the provisions mentioned above, the suit be dismissed.

3 Learned counsel for the respondent points out that the evidence of the respondent is not yet over and it is the case of the respondent that the father of the respondent has given the premises to the petitioner on leave and license basis and the application is nothing but delaying tactics.

4 At this stage, it is not necessary to consider the rival contentions as the evidence of the respondent is not yet complete. The application itself is at a premature stage. After the completion of evidence, it will be open to the petitioner to make an application under Order XV Rule 3 of the Civil Procedure Code, which application will be decided on its own merits. All the contentions of the parties including the contention of the respondent that such application is not maintainable in law, is kept open.

5 Writ petition is accordingly disposed of in above terms.

6 Since the suit is pending since the year 2003, both the parties will cooperate with the learned Small Causes Court Judge for early disposal of the suit.

(*N. M. JAMDAR, J.*)