

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

WRIT PETITION NO.418 OF 2014.

(SMT. SHASHIKALA KISHOR KHATRI & ANR....VS..ZOE B HUSSAIN SULEMAN & 5 OTH.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 14, 2015.

Heard Shri A.A.Naik, learned advocate for the petitioners, Shri S.V.Sohoni, learned advocate for the respondent Nos.1 to 3 and Shri Yash Maheshwari, learned advocate for the respondent No.4. Respondent Nos. 5 and 6 are served by paper publication, however, they are not represented by anybody.

This Court, by order dated 10th February, 2015, has issued notice for final disposal.

This petition is filed by the defendants who have come on record as legal representatives of the original defendant No.1. The petitioners have challenged the order passed by the trial Court allowing the application (Exh.61) filed by the original plaintiffs and striking out the written statement of the petitioners.

The plaintiffs have filed the civil suit praying for decree for possession and for injunction. The civil suit was filed against Shri Kishore Khatri (original defendant No.1) alleging that he was the tenant. Shri Kishore Khatri-original defendant No.1 filed his written statement. After filing of the written statement Shri Kishore Khatri-original defendant No.1

died and the petitioners and respondent Nos. 5 and 6, being legal representatives of Shri Kishore Khatri-original defendant No.1, are brought on the record as defendants. The petitioners [defendant Nos.1 (a) and 1(d)] filed written statement after they came to be impleaded as party in the civil suit. The plaintiffs objected to the acceptance of the written statement of the petitioners on the ground that they have taken inconsistent pleas with the pleadings in the written statement filed by the original defendant No.1. The plaintiffs contended that paragraph Nos. 15 to 23 of the written statement filed by the petitioners cannot be taken on the record and they have to be struck-out under Order VI Rule 16 of the Code of Civil Procedure. The learned trial Judge, by the impugned order, has allowed the application filed by the plaintiffs and has struck-out the written statement (Exh.57) filed by the petitioners. The petitioners being aggrieved by the order passed by the trial Court have filed this petition.

With the assistance of the learned advocates for the respective parties, I have examined the written statement filed by the original defendant No.1 and the written statement filed by the petitioners i.e. defendant Nos. 1(a) and 1(d). I find that the paragraph Nos. 15 and 16 of the written statement filed by the petitioners [defendant Nos. 1(a) and 1(d)] cannot be permitted as the pleadings which are inconsistent with the pleadings in the written statement filed by the original defendant No.1 are being sought to be incorporated. As far as paragraph Nos. 18 to 24 of the written statement filed by the petitioners is concerned, they can be permitted as they cannot be said to be inconsistent with the pleadings in the written statement filed by the original defendant No.1.

The plaintiffs, in the application filed by them under Order VI Rule 16 of the Code of Civil Procedure opposed the permitting of paragraph Nos. 15 to 23 of the written statement filed by the petitioners and the plaintiffs had not opposed the acceptance of the paragraph Nos. 1 to 14 of the written statement filed by the petitioners on the record.

In view of the above, the following order will subserve the ends of justice.

- i) The impugned order is modified.
- ii) The petitioners are permitted to place on the record their written statement with paragraph Nos. 1 to 14 and 17 to 24.
- iii) Paragraph Nos. 15 and 16 of the written statement filed by the petitioners are not permitted to be taken on the record and they are struck out.

The petition is **partly allowed** in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE