

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.11274/2015

920 WRIT PETITION NO. 11274 OF 2015

ABHIJIT ARVIND WAKASKAR AND ANOTHER
VERSUS
SARJUBAI MOHANLAL AGRAWAL

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Advocate for Petitioners : Mr.Gujarathi Yatish G.

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CORAM : P.R. BORA, J.
Dated: January 19, 2016

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PER COURT :-

1. Heard Shri Y.G.Gujarathi, the learned Counsel appearing for the petitioners.

2. The petitioners have challenged the order dated 29.10.2014 passed by the third Joint Civil Judge, Junior Division, Dhule, below Exh.24 in RCS No.166/2013. Invoking Section 10 of the Code of Civil Procedure, the present petitioners had filed the said application seeking stay to the trial of RCS No.166/2013, till decision of RCS No.388/2012. It was the contention of the petitioners that since the parties to both the civil suits are same, and relief claimed in both the civil suits is also same, unless the earlier suit is decided on merits, the subsequent suit cannot be proceeded further. The trial Court has, however, rejected the said application vide the impugned order.

3. I have perused the documents filed on record. It is true that the parties to both the suits are same and in both the

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suits the plaintiff has sought eviction of the defendants from the premises in their occupation as tenant. However, in RCS No.388/2012, the eviction of the defendants is sought on the ground of default allegedly committed by them in paying the rent of the subject premises whereas in RCS No.166/2013, the eviction of the defendants is sought on the ground of bona fide requirement of the subject premises for the grand son of the plaintiff. It is, thus, evident that the cause of action for filing RCS No.166/2013, is different than the cause of action for filing of the previous suit i.e. RCS No.388/2012. Different grounds for eviction as enumerated in the Rent Act constitute different cause of actions. Two proceedings under two different grounds for eviction are, therefore, permissible in law.

4. Section 10 of the Code of Civil Procedure applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are: "the matter in issue is directly and substantially in issue" in the previously instituted suit. Having regard to the facts involved in the present petition, it is quite evident that Section 10 would not be attracted in the present case for the reason that, in RCS No.166/2013, the matter in issue is in respect of bona fide requirement of the suit premises for the grand son of the plaintiff whereas, in the previously instituted RCS No.388/2012, the point at issue is: the default, allegedly committed by the defendants, in making payment of the rent of the suit premises. As such, it is difficult to accept the contention

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of the present petitioners that the point at issue in RCS No.166/2013 is directly and substantially in issue in the previously instituted RCS No.388/2012.

5. In the circumstances, it does not appear to me that the trial Court has committed any error in rejecting the application filed by the present petitioners. The Writ Petition is devoid of any substance. Hence the following order:

ORDER

a) The Writ petition is rejected.

(P.R. BORA, J.)

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