

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

WRIT PETITION NO. 8617 OF 2016

M/s Killic Nixon Ltd

..Petitioner.

Vs

M/s. Forbes Gokak Ltd and Ors

.. Respondents

Mr. Kevin A. Chettiar, Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 24/08/2016**

PC:

1. Heard Mr.Kevin Chettiar, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.1' has challenged the Judgment and order dated 9.4.2015 passed by the learned Judge presiding over Court Room No.14 of the Small Causes Court at Mumbai below Exhibit 62 in L.E.& C. Suit No. 137/162 of 1992. By that order, the learned trial Judge rejected the application made by defendant no.1 for dismissing the suit.
3. In support of this Petition, Mr. Chettiar strenuously contended that the respondents/plaintiffs have instituted Suit No. L.E.& C. 137/162 of 1992 in the year 1992, inter alia, alleging that defendant no.1 is inducted as licensee in the suit premises

and the licence was terminated by notice dated 18.5.1992. During pendency of the suit, the plaintiffs have instituted T.E.&R. Suit No.33/37 of 2012, inter alia, on the ground that defendant no.1 is exempted from operation of Rent Act in view of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 on the ground that share capital of defendant no.1 exceeds Rs. 1 Crore. He submitted that the plaintiffs are prosecuting simultaneously parallel proceedings in respect of the same property and between the same parties. There will be conflict of decision in both the suits. He, therefore, submitted that the learned trial Judge should have dismissed the suit after the plaintiffs filed T.E.& R Suit in the year 2012. As the proceedings in both the suits are parallel, the plaintiffs cannot prosecute these two parallel proceedings.

4. While rejecting the application, the learned trial Judge has relied upon the decision of this Court in Godrej and Boyce manufacturing Co Ltd Vs. Sridhar Jagannath Nerurkar, 2005 (1) Bom. C.R. 839 wherein this Court has held thus:-

“Suit for possession – Institution under T.P.Act during pendency of prior suit for eviction under Bombay Rent Act-whether said subsequent suit for possession needs to be stayed during pendency of first suit – Held, matter is not res integra in view of unreported decision of this court in C.R.A No.1191/2001 dated 18.1.2002, wherein it was held that though relief of possession claim was the same, the causes of action for the two suits was entirely different. The cause of action for possession in the first suit was existence of a

ground for eviction under Bombay Rent Act while in second suit it was only terminate of tenancy by efflux of time or by notice. Thus the procedures were not parallel and were allowed to be continued and proceeded with simultaneously. 2001 (8) S.C.C. 397 discussed; 204(supp) Bom. C.R. 255 relied on."

5. Perusal of the above extracted portion shows that this Court has held that the issue is no longer res integra in view of unreported decision in C.R.A. No.1191/2001 dated 18.1.2002. It has been held that the procedures are not parallel and were allowed to be continued and proceeded with. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. The controversy raised in this petition is squarely covered by the decision of this Court in Godrej and Boyce Manuf. Co. Ltd (supra). Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)