

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 2549 OF 2016

Shri Pandharinath Bhalchandra
Bhagwat

...Petitioner

Versus

Shri Prafulla Dattatraya Phadake &
Anr.

...Respondents

.....

Mr. S. M. Oak i/b Mr. S. A. Joshi for the Petitioner.

CORAM : R. M. SAVANT, J.

DATE : 1st MARCH, 2016.

P. C. :

1. The writ jurisdiction of this Court is invoked against the order dated 17.02.2016 passed by the learned 3rd Joint Civil Judge Senior Division, Thane by which the application, Exhibit 126 for stay of the suit and for consolidating the present suit i.e Suit No.498/2003 with Regular Civil Suit No. 57/2009 came to be rejected. The said suits have been filed by the respondent landlord. The said suits have been filed for possession and the grounds for eviction in the set aside suits are arrears of rent in Regular Civil Suit No. 57 of 2009 and bonafide requirement in Regular Civil Suit No. 498 of 2003. It seems that an issue with regard to whether there is a relationship of landlord and tenant between the parties has been framed in the suit

filed at the earlier point of time being Regular Civil Suit No. 498 of 2003 and has also been framed in Regular Civil Suit No. 57 of 2009, however it seems that the burden is cast on the petitioner-defendant to prove such a relationship.

2. The Trial Court has rejected the said application, Exhibit 126 for the reasons mentioned in the order. The learned Counsel for the petitioner, Shri S. M. Oak would reiterate the case of the petitioner urged before the trial Court and would rely upon the judgment of the Apex Court reported in (2004) 3 SCC 85 in the matter of **Chittivalasa Jute Mills Vs. Jaypee Rewa Cement** and the judgment of this Court reported in 2011 (6) Mh.L.J. 515 in the matter of **Ravikumar Shrichandji Kalra Vs. Pradeepsingh Sunderlal Chouhan**. Insofar as the judgment of the Apex Court is concerned in the facts of the case before it that the Apex Court has directed that it would be advantageous to try both these suits together as they were cross suits arising out of the same transaction.

3. Insofar as the facts in the judgment in **Ravikumar Shrichandji Kalra** (supra) is concerned the controversy was revolving the agreement dated 18.02.2008 of which recession was sought by one party whereas the other party was seeking specific performance. It is in the said context that the consolidation of the

suits was ordered. In the instant case as indicated above the ground on which the eviction of the petitioner-defendant is sought is different in both the suits though common issue arises as to whether there is a relationship of landlord and tenant in both the suits. It is required to be noted that both the suits are before the same Court. However, they are at different stages. Hence, if the issue relating to whether there is relationship of landlord and tenant is decided in the suit filed earlier in point of time, the same would necessarily impact the issue framed in the other suit. Hence no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)