

Sequeira

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

WRIT PETITION NO. 8128 OF 2014

Dr.Rustum Sam Boyce

.. Petitioner

V/s

M.Haresh H.Melwani & anr.

.. Respondents

Ms.Snehal Raju Modi, for the Petitioner.

Mr.A.G.Damle – senior Advocate i/b Ms.Mona Mehta, for
Respondent No.2.

***CORAM : N.M.Jamdar, J.
Monday, 5 December 2016.***

Oral Order. :

By this Petition, the Petitioner has challenged the order passed by learned Small Causes Court, Judge Mumbai dated 2 September 2013 framing certain preliminary issues and directing the parties to give oral and documentary evidence.

2. As against this order there is no appeal provided neither there is any revision available and the Petitioner has approached this Court under power of superintendence. In the decision of Full bench of this Court in the case of *Bhartiben Shah Vs. Smt.Gracy Thomas and others – 2013 (2) Mah.L.J. 25*, the Full bench has emphasised on the time limit provided under the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 and the legislative policy in not

providing a revision against procedural orders. This legislative intent cannot be defeated by interfering with each and every interlocutory order, against which no revision is provided under power of superintendence unless, the order leads to gross failure of justice or is patently illegal. The main grievance that was raised by the learned counsel for the Petitioner is that without there being any basis for framing the issues, in the midst of an application for temporary injunction, the application below Exhibit 24 for framing preliminary issues was moved only to delay the hearing. This grievance does not survive. By order dated 17 June 2016, after hearing both the parties, liberty was granted to the Petitioner to proceed to seek ad-interim relief under section 9-A(2) of the Code of Civil Procedure. The learned Small Causes Court by order dated 12 July 2014 granted ad-interim mandatory relief in favour of the Petitioner. It is informed that thereafter appeal is filed by Respondents which is pending and in which the mandatory direction has been stayed. There is no difference between the temporary injunction that is sought and the injunction sought by way of an ad-interim order. Therefore, the grievance of the learned counsel for the Petitioner that prejudice is caused to the Petitioner for moving the application for framing preliminary issue, is not warranted.

3. As far as the issues that are framed, Respondents have objected to the filing of the suit on the ground that it is barred by limitation and the learned Judge has framed a preliminary issue in view of the

decision of the Apex Court in the case of *Foreshore Co-operative Housing Society Limited and ors. Vs. Praveen D.Desai & ors. -(2015) 6 SCC 412*. The other issue that has been framed is in respect of the jurisdiction of the Court on the basis of existence of landlord-tenant relationship and the title of the Petitioner-landlord. The framing of issues in this manner is a discretion of the trial Court and merely because another view is possible cannot be a basis for exercising the power of superintendence. Having been satisfied that the Petitioner had full opportunity to put forth its case for grant of mandatory injunction, I am not inclined to interfere with the order framing issues for which, as stated earlier neither appeal nor revision is provided. It is open to the Petitioner to contest the case as per the issues framed and also to put forth all the submissions regarding the burden of proof in respect of the issues so framed. With this clarification, Writ Petition is disposed of.

(N.M.Jamdar, J.)