IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5624 OF 2017

WITH

WRIT PETITION (L) NOS. 12247, 12249, 12263, 12264, 12445, 12446, 12510, 12512, 12515, 12574, 12576, 12627, 12750, 12751, 12760, 12769, 12770 AND 12779 OF 2017

Mr. Peter Cajetan Travasso and ors. .. Petitioners
vs.
Shri. Lal Bherumal Laungani and ors. .. Respondents

Mr. P.S. Dani, Sr. Advocate a/w. Yasmin Bhansali i/b. Yasmin Bhansali and Co. for the Petitioners.

Ms Rajni Iyyer, Sr. Advocate a/w. Cherin Lapashiya i/b M/s. Niranjan and Co. for Respondent No.1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 5th October 2017.
Date of Pronouncing the Judgment : 10th October 2017.

COMMON JUDGEMENT:-

1] Heard Mr. P.S. Dani, learned senior advocate alongwith Yasmin Bhansali, learned counsel for the petitioners and Ms Rajni Iyyer, learned senior advocate alongwith Cherin Lapashiya, learned counsel for respondent No.1 (contesting respondent).

2] Rule in each of the petitions. With the consent of and at the request of learned counsel for the parties, Rule in each of the petitions is made returnable forthwith.

3] Learned counsel for the parties submit that the order impugned in each of these petitions is virtually identical and therefore, these petitions can be disposed of by common order.

4] They agree that Writ Petition No. 5624 of 2017 may be taken as lead petition.

5] The challenge in Writ Petition No. 5624 of 2017 is to the order dated 17th March 2017 made by the Division Bench of the Small Causes Court (Revisional Authority) setting aside the order dated 17th October 2015, by which, the Small Causes Court, had permitted joinder of the petitioners as defendants in R.A.E. Suit No. 1148 of 2013 instituted by respondent No.1 (plaintiff).

6] Mr. Dani, learned senior advocate for the petitioners, submits that there is no dispute whatsoever that the petitioners are the owners of the suit premises. In terms of agreement dated 8th January 1984, the petitioners have agreed to sell the suit premises to the plaintiff. However, the said agreement failed and there are several litigations pending between the petitioners and the plaintiff in relation to the suit property. Mr. Dani submits that the plaintiff has instituted the suit seeking eviction of the defendants-tenants on the ground that the plaintiff is a rent collector and therefore, the landlord, for the purposes of the Maharashtra Rent Control Act, 1999 and further, that the defendants-tenants have allegedly committed defaults in payment of rent. Mr. Dani submits that the petitioners, as the owners, have no interest in securing the eviction of the tenants-defendants. For this purpose, Mr. Dani submits that the petitioners are necessary or in any case proper parties to the suit instituted by the plaintiff.

7] Mr. Dani submits that in any case, even if a decree of eviction is required to be made against the defendants-tenants, the possession of the suit property has to be restored

to the true owner, i.e., the petitioners herein. Mr. Dani submits that the Small Causes Court had rightly ordered the impleadment of the petitioners as defendants to the suit and the Revisional Authority, without there being any error of jurisdiction, has declined impleadment. Mr. Dani submits that this is a fit case to set aside the impugned order and restore the order made by the Small Causes Court on 17th October 2015.

8] Ms Rajni Iyyer, learned senior advocate for respondent No.1 (plaintiff), submits that R.A.E. Suit No. 1148 of 2013 instituted by the plaintiff seeks eviction of the tenants-defendants on the ground of default in payment of rents. In such a suit, there is no question of the Small Causes Court adjudicating serious disputes between the plaintiff and the petitioners. She submits that the petitioners are neither necessary nor proper parties. She submits that impleadment of the petitioners as a parties to the suit will completely embarrass the proceedings in the suit since, the scope of suit is not determine the respective rights of the plaintiff and the petitioners.

9] Ms Iyyer further submits that the petitioners' application seeking impleadment was totally *mala fide* and attempt to overreach several orders made by this Court in several disputes pending between the petitioners and the plaintiff in relation to the agreement dated 8th January 1984 and the irrevocable Power of Attorney (POA) executed by the petitioners in favour of the plaintiff. Ms Iyyer submits that this is yet another reason why no impleadment ought to be permitted. Ms Iyyer submits that there is absolutely no jurisdictional error or perversity in the impugned order and therefore, this Court, ought not to interfere with the impugned order in the exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India.

10] The rival contentions now fall for determination.

11] The R.A. E Suit No. 1148 of 2013 has been instituted by the plaintiff to seek eviction of the defendants-tenants on the ground of default in payment of rent. In the suit, the plaintiff has pleaded the basis upon which, he claims to be the landlord in respect of suit property of which the defendants, are the tenants. At this stage, there is no necessity to go into

the issue of correctness or validity of such averments. In a suit of the aforesaid nature, the petitioners, who claim to be the actual owners of the said property cannot be regarded to be necessary parties. On the basis of any decree, which the plaintiff may obtain in the present suit, there is no question of any effect upon the petitioners' title, if any, to the suit property. For the purposes of the Maharashtra Rent Control Act, 1999, it is not necessary that the status of landlord and owner have to necessary be combined in one and the same person.

12] In fact, Section 7(3) of the Maharashtra Rent Control Act, 1999 defines expression "*landlord*" as follows:

> *"(3) Landlord means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord, and further includes in respect of his subtenant, a tenant who has sub-let any premises; and also includes, in respect of a licensee deemed to be a tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947), the licensor or who has, given premises on licence and in respect of the State Government or as the case may be, the Government allottee referred to in sub-clause (b)*

> *of clause (2) deemed to be a tenant by section 27, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December, 1996, that is before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Mah. XVI of 1947);*

13] In ***Nisha Rani Mookherjee vs. Puran Chand Jain – (2004) 10 SCC 637,*** in the context of definition of expression "*landlord"* in Section 2(d) of the West Bengal Act, the Supreme Court, at paragraphs 8 and 9 has observed thus:

> "*8. The expression "landlord" has been defined in the Act in Section 2(d)and reads as follows:*
>
> > *"2.(d)'landlord' includes any person who, for the time being, is entitled to receive or but for a special contract would be entitled to receive the rent of any premises, whether or not on his own account."*
>
> *9. In view of the undisputed position that the landlady was receiving rent, she is certainly covered by the definition of "landlord" as appearing in the Act."*

14] Mr. Dani, however, submitted that the petitioners, who according to him, are admittedly the owners of the suit property, are at least a proper parties to R.A.E. Suit No. 1148 of 2013 and therefore, were required to be impleaded as

parties to the suit. He submits that the petitioners in this case, are entitled to contend that they do not want a decree of eviction against their tenants on the ground of default in payment of rent. In the alternate, the petitioners are entitled to contend that the vacant possession of the suit premises be restored to the petitioners than to plaintiff, who has per his own pleadings in the plaint, claims to be only a rent collector.

15] Order 1 Rule 10(2) of the Code of Civil Procedure 1908 (CPC) entitles the Court, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. The object of the rule is not to change the scope or character of the suit by adding new parties and to enable them to litigate their own independent suit but simply to hold them to avoid unnecessary litigation

which might otherwise become necessary. The main object of this rule is also not to prevent multiplicity of actions, even though it may, incidentally, have that effect. The person to be joined must be one, whose presence is necessary as a party. When a right is claimed against him and when it is not possible to pass an effective decree in his absence, he becomes a necessary party. Similarly, if an adjudication is likely to affect a party, then, ordinarily, joinder of such party is necessary so as to effectually and completely settle the issue between the parties and grant comprehensive relief.

16] In this case, as noted earlier, considering the nature of the suit and the relief claimed, it cannot be said that the petitioners were necessary parties to R.A.E. Suit No. 1148 of 2013. Mr. Dani, however, submits that the petitioners are at-least proper parties and therefore, discretion exercised by the Small Causes Court in ordering the petitioners' joinder was incorrectly interfered with by the Revisional Authority.

17] Order 1 Rule 10(2) of the CPC confers a wide discretion to the Court to meet the every case of joinder or non-joinder of parties. However, discretion is required to be exercised not

arbitrarily, but on judicial principles. Ordinarily, the plaintiff is the *dominus litus*. However, joinder can be ordered even against the wishes of the plaintiff, if the situation, so demands. The power to order joinder is normally confined in two cases:

(i) When a party ought to have been joined, but is not joined (necessary party); and

(ii) When, without presence of such party, the question involved in the case cannot be effectively decided (proper party).

18] The petitioners in this case, has failed to make out a case that they are necessary parties to R.A.E. Suit No. 1148 of 2013. The reliefs applied for in the suit are perfectly capable of being granted or refused without presence of the petitioners. Any relief granted or finding recorded in R.A.E. Suit No. 1148 of 2013 cannot, affect the rights, if any, of the petitioners to suit property, regards which, there are already several litigations pending between the parties. In fact, the joinder of the petitioners in R.A.E. Suit No. 1148 of 2013, might have the effect of altering the very character of such suit and introducing a litigative front between the plaintiff

and the petitioners in the context of their respective rights *qua the* agreement dated 8th January 1984 and the irrevocable POA. Such disputes are quite alien to proceedings in R.A.E. Suit No. 1148 of 2013.

19] In the absence of the petitioners, it is not as if R.A.E. Suit No. 1148 of 2013 cannot be completely or effectively decided. The presence of the petitioners is not necessary for determination of real matter in dispute. The presence of the petitioners is not necessary for effectual and complete adjudication of all the questions involved in R.A.E. Suit No. 1148 of 2013. Thus construed, it cannot be said that the petitioners are either necessary or proper parties insofar as R.A.E. Suit No. 1148 of 2013 is concerned.

20] If, the petitioners, are desirous of obtaining any reliefs against the plaintiff, including the relief that the plaintiff ought not to be permitted to prosecute suits of eviction against the tenant or not to recover or retain the possession of the suit property from the tenants, it is for the petitioners to take out independent proceedings in that regard.

21] At this stage, it is not necessary to go into the issue raised by Ms Iyyer that the petitioners have in fact, in independent proceedings, made attempts to secure such reliefs and because, the petitioners had not been successful in securing such reliefs, the petitioners, seeks to indirectly secure such reliefs by applying for impleadement in R.A.E. Suit No. 1148 of 2013 and other suits for evictions of tenants.

22] This is really not the occasion to examine in detail, if the petitioners purpose for seeking impleadment was to overreach certain orders made by this Court in various disputes pending between the petitioners and the plaintiff. Since, the petitioners, are neither necessary nor proper parties, there is no reason to order the petitioners' impleadment in R.A.E. Suit No. 1148 of 2013 irrespective of the motives or the real reason for the petitioners to seek such impleadment.

23] Since, the power to order impleadment of parties is discretionary, one of the factors which has legitimately impacted the exercise of discretion by the Revisional Authority is the pendency of independent litigations between

the petitioners and the plaintiff, in which, the parties, are already asserting their rights *qua* the suit property. The Revisional Authority has rightly held that R.A.E. Suit No. 1148 of 2013 or for that matter other suits for evictions are hardly, the proper forum for resolution of *interse* disputes between the plaintiff and the petitioners. The exercise of discretion in such circumstances cannot be regarded as unreasonable or perverse.

24] The material on record indicates that this Court, by order dated 17th February 2003 in Notice of Motion No. 325 of 2003 in Suit No. 41 of 2003 has granted in favour of the plaintiff (respondent No.1 herein), the following ad-interim reliefs:

> "*(a) that pending the hearing and final disposal of the suit this Hon'ble Court may be pleased by its Order and injunction restrain the Defendants, their servants and agents and any other persons claiming through them from interfering with and/or obstructing the use, occupation and enjoyment of the Suit property including the collection of the rent and other charges from the Tenants/Occupants of the suit property;*
> *(b) that pending the hearing and final disposal of the suit this Hon'ble Court may be pleased by its Order and injunction the Defendants, their servants and agents and any other persons claiming through them restraint from creating 3rd parties rights and/or transferring or accepting the surrender of tenancy rights in respect of various*

tenements on the Suit property more particularly described at Exhibit-A hereto or been collecting any rent and/or compensation from any of the tenants or occupants of the suit property".

25] By further order dated 18th February 2005, the ad-interim relief was confirmed on the condition that the plaintiff deposits in this Court a sum of Rs.4 crores. Ms Iyyer points out that this amount has been deposited and therefore, the interim relief in the aforesaid terms is presently operative.

26] In Suit No. 41 of 2003 instituted by the plaintiff, the petitioners have raised a counter claim. The petitioners have also applied for interim reliefs. The motion for interim reliefs applied for by the petitioners was disposed of by this Court by order dated 18th August 2005. The order dated 18th February 2005, by which, the ad-interim reliefs granted in favour of the plaintiffs came to be confirmed was directed to continue. However, it was clarified that the plaintiffs are not entitled to develop the said property or carry on construction thereon or create any third party rights in respect of the suit property. The plaintiffs were given liberty to negotiate with the tenants and arrive at the settlement but the same was at his own risk, cost and consequences, without claiming any equities.

27] There is on record yet another order dated 31st March 2009 made by this Court disposing of Notice of Motion No. 3905 of 2008 in the counter claim instituted by the petitioners , again, seeking for certain interim reliefs, including the interim relief in relation to transfer of tenancy. This Court, by order dated 31st March 2009, dismissed the said notice of motion with costs quantified at Rs.25,000/-. Such costs were imposed because the petitioners had failed to disclose the filing of Notice of Motion No. 2192 of 2005 by them and the order made therein.

28] Since, the suit and the counter claim between the petitioners and the plaintiff is already pending in this Court, obviously, there is no question of permitting the petitioners to re-agitate such disputes before the Small Causes Court in R.A.E. Suit No. 1148 of 2013. Impleadment of the petitioners in R.A.E. Suit No. 1148 of 2013 and similar other suits instituted by the plaintiff, seeking eviction of the tenants-defendants, will unnecessarily embarrass the proceedings in the suits for evictions, without any significant corresponding benefit to the petitioners. In such circumstances, it cannot be said that the Revisional Authority has exercised discretion

capriciously or arbitrarily in declining the petitioners leave to be impleaded as defendants in R.A.E. Suit No. 1148 of 2013 and other suits for eviction of the tenants. There is no jurisdictional error or perversity in the impugned order so as to warrant interference under Article 227 of the Constitution of India.

29] For the aforesaid reasons, Writ Petition No. 5624 of 2017 is liable to be dismissed and is hereby dismissed.

30] Since, learned counsel for the parties agree that the impugned order in the remaining petitions is virtually identical to the impugned order in Writ Petition No. 5624 of 2017, for the very same reasons, remaining petitions are also liable to be dismissed and are hereby dismissed. In fact, Writ Petition (L) Nos. 12512 of 2017 and 12750 of 2017, were not on board. However, since, it was agreed that the challenge in the said petitions pertains to virtually identical orders, the same are also taken on board and disposed of.

31] Rule is discharged in each of the petitions. There shall however, be no order as to costs.

32] It is clarified that the observations in the impugned order or for that matter present order are only in the context of deciding whether the petitioners are required to be impleaded as parties to the suits for eviction. Therefore, none of these observations can be made use of in the litigations pending between the petitioners and the plaintiff *qua* their respective claims to the suit property.

(M. S. SONAK, J.)

33] At this stage, Ms.Bhansali, learned counsel for the Petitioners in Writ Petition No.5624 of 2017 requests for continuation of ad-interim relief, i.e. stay of further proceedings in the pending suit. Ms.Bhansali states that the stay has been in operation since April, 2013. The ad-interim relief is continued for a period of eight weeks from today.

(M. S. SONAK, J.)