

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12571 OF 2015

Anil Bhagu Lalwani ... Petitioner
Vs.
M/s. Shantasagar Hotels Pvt. Ltd. through its
Director Kanhaiyalal M. Talera ... Respondent

Mr. S. M. Gorwadkar, Senior Advocate a/w. Mr. Niranjana Mogre for
Petitioner.
Mr. Madhav Jamdar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 08, 2017

P.C. :

Heard Mr. Gorwadkar, learned Senior Counsel for petitioner and
Mr. Jamdar, learned Counsel for respondent at length. Rule. Mr.
Jamdar waives service for respondent. Having regard to the narrow
controversy raised in this Petition as also at the request and by consent
of the parties, Rule is made returnable forthwith and the Petition is taken
up for final hearing.

2. By this Petition under Article 227 of the Constitution of India,
petitioner, hereinafter referred to as 'defendant', has challenged the
judgment and order dated 05.10.2015 passed by the learned 9th Joint
Civil Judge, Senior Division, Pune below exhibit-19 in Special Civil
Suit No.1499 of 2011. By that order, the learned trial Judge rejected the
application made by the defendant under Section 10 of the Code of Civil
Procedure, 1908 (for short 'C.P.C.') for staying the proceedings of
Special Civil Suit No.1499 of 2011 pending the disposal of Civil
Revision Application No.30 of 2010 before this Court.

3. Respondent, hereinafter referred to as 'plaintiff', has instituted

Civil Suit No.107 of 2008 against the defendant - B. M. Lalwani for possession of flat on the ground floor consisting of one hall, varanda, two bedrooms, passage, kitchen room, WC and bathroom in the building known as Raghuprasad on Tadiwala Road, Pune 411 001 (for short 'suit premises') under Section 16 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Plaintiff had instituted Suit on two grounds, namely, that plaintiff requires the suit premises reasonably and bonafide for its own occupation as contemplated by Section 16(1)(g) and that defendant is not using the suit premises for the purpose for which it was let out for a period of more than six months before instituting the Suit without sufficient cause as contemplated by Section 16(1)(n) of the Act. Suit was decreed on 10.09.2008. Aggrieved by that decision, defendant - B. M. Lalwani preferred Civil Appeal No.614 of 2008. By order dated 03.11.2009, the learned District Judge allowed the appeal. Aggrieved by that decision, plaintiff instituted Civil Revision Application No.30 of 2010 in this Court. It is not in dispute that Civil Revision Application is admitted by issuing 'Rule' and the same is pending in this Court.

4. During the pendency of this C.R.A., defendant - B. M. Lalwani expired at Pune on 15.12.2010. Civil Application No.549 of 2012 was taken out in the pending C.R.A. by the plaintiff for bringing on record sons of defendant - B. M. Lalwani, namely, Raju B. Lalwani and Anil B. Lalwani (petitioner herein). By order dated 29.06.2012, this Court allowed the application in terms of prayer clauses (a) and (b). That order was modified on 30.08.2012 and Civil Application No.549 of 2012 was allowed in terms of prayer clauses (a), (b) and (c). Accordingly, petitioner and his brother, Raju Lalwani are brought on record.

5. During the pendency of the C.R.A., respondent-plaintiff has

instituted Special Civil Suit No.1499 of 2011 in the Court of Civil Judge, Senior Division, Pune against the petitioner herein for possession and damages on the ground that petitioner herein is a trespasser. Petitioner filed application under Section 10 of C.P.C. for staying proceedings of Special Civil Suit No.1499 of 2011 in view of the pendency of C.R.A. in this Court. By the impugned order, the learned trial Judge has rejected that application. It is against this order, defendant Anil B. Lalwani has instituted the present Petition.

6. In support of this Petition, Mr. Gorwadkar submitted that petitioner herein is admittedly son of the original defendant, B. M. Lalwani. Original defendant, B. M. Lalwani died on 15.12.2010 and accordingly, petitioner along with his brother Raju Lalwani is brought on record in this C.R.A. He submitted that as the C.R.A. is pending in this Court, it is necessary to stay the proceedings of Special Civil Suit No.1499 of 2011 pending before the Court of Civil Judge, Senior Division, Pune. The learned trial Judge was not justified in rejecting the application.

7. On the other hand, Mr. Jamdar supported the impugned order. He invited my attention to the issues that were framed in the first Suit namely, Civil Suit No.107 of 2008 instituted against B. M. Lalwani and the issues framed in the second Suit namely, Special Civil Suit No.1499 of 2011. He also invited my attention to the assertions made in paragraph 5 of Special Civil Suit No.1499 of 2011. In paragraph 5, plaintiff contended that defendant Anil B. Lalwani claims that his father B. M. Lalwani had bequeathed tenancy rights under Will dated 12.03.2001. Tenant B. M. Lalwani has contravened the provisions of Section 16(1)(e) of the Act as he has transferred or assigned his interest in favour of the present petitioner and it is void, illegal, unlawful as laid

down under Section 15 of the old Act corresponding to Section 26 of the Act. Defendant, therefore, lost protection of the Rent Control Act and as such, is a trespasser. He also relied upon decision of the Apex Court in the case of *Aspi Jal Vs. Khushroo Rustom Dadyburjor*, 2013 (4) Bom. C.R. 298. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The facts stated hereinabove are not in dispute. Admittedly, respondent-plaintiff has instituted first Suit against B. M. Lalwani inter alia praying for possession of the suit premises on the ground of bonafide and reasonable requirement as also non-user. Suit was decreed. Aggrieved by that decision, respondent-plaintiff instituted C.R.A.No.30 of 2010 in this Court. During the pendency of that C.R.A., B. M. Lalwani expired on 15.12.2010 and petitioner along with his brother Raju Lalwani is brought on record. In view of the pendency of this C.R.A., the learned trial Judge could not have proceeded with the second Suit. It is the case of the petitioner that after the death of his father, he has become lawful tenant of the suit premises under Section 7(15)(d) of the Act. As against this, it is the case of the respondent-plaintiff that tenancy cannot be bequeathed and there is contravention of provisions of the Rent Control Act and more particularly, Section 16(1) (e) of the Act. As the C.R.A. is admittedly pending in this Court, the question whether petitioner herein can claim tenancy under Section 7(15)(d) of the Act can be gone into the C.R.A. and consequently, the trial Court should have stayed the proceedings of Special Civil Suit No.1499 of 2011.

9. Mr. Jamdar relied upon the decision of *Aspi Jal* (*supra*). Perusal

of paragraph 3 of that decision shows that in all three Suits were instituted against the defendant. First Suit was instituted on the ground of bonafide requirement on 06.11.2004. On the same day, second Suit was instituted against the defendant on the ground of non-user. Pending these two Suits, third Suit was instituted on 22.02.2010 on the ground of non-user. Defendant filed application for staying third Suit till the final disposal of the first and second Suits. The learned trial Judge allowed application on 06.07.2011 and stayed the proceedings of the third Suit till the disposal of the first two Suits. That decision was confirmed by this Court on 09.02.2012. Against which, plaintiffs approached the Apex Court. In paragraph 10, the Apex Court referred to the decision of *National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara*, 2005 (2) SCC 256 and reproduced paragraph 8. In paragraph 11, the Apex Court observed thus,

“11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.”

10. The Apex Court accordingly set aside the trial Court's and High Court's order.

11. In the present case, in view of the death of the B. M. Lalwani, on 15.12.2010 as also having further due regard to the fact that petitioner is

brought on record as his legal heir in the pending C.R.A., the entire complexion has changed. In view thereof, decision relied by Mr. Jamdar does not advance respondent's case.

12. In the light of the aforesaid discussion, the impugned order cannot be sustained and as such, is liable to be set aside and is accordingly set aside. Application exhibit-19 stands allowed. Special Civil Suit No.1499 of 2011 is stayed pending the disposal of C.R.A. No.30 of 2010. Liberty is reserved to the parties to move the trial Court after disposal of C.R.A. Liberty is also reserved to the respondent to move C.R.A. for early disposal. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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