

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 256/2014 & CM No. 4804/2014 (for stay)

SMT CHANDRA PRABHA SARAFF & ANR Petitioners

Through Mr. Sohel Rishabh for Mr. Ritesh
Aggarwal, Advocate

versus

SHRI SHAHID BABE & ORS Respondents

Through Mr. Kishan Rana, Advocate for
respondent no.1

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.11.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 13th November, 2013 in Suit No. 238/2011 of the Court of Civil Judge, East, KKD, Delhi] of dismissal of the application of the petitioners/defendants no.4 & 5 under Section 10 of the Code of Civil Procedure, 1908 (CPC).

2. The petition was entertained and notice thereof ordered to be issued and vide ex parte ad-interim order, further proceedings in the suit from which this petition arises, were stayed. The said order continues to be in force. Only the respondents no.1 & 2 Shahid Babe and Parvez Mia were served and the respondents no.3 & 4 Parvez Ahmed and Sachin Gupta remain unserved. However, the counsel for the petitioners/defendants No.4 & 5 has filed an affidavit of service

stating that the counsel for the respondents No.1 to 4 has refused service.

3. The order dated 19th November, 2015 records that the respondents no.2 to 4 were pro forma parties. Since then the matter is being adjourned from time to time.

4. Mr.Sohel Rishabh, Advocate appearing states that Mr. Ritesh Aggarwal, Advocate for the petitioners/defendants no.4 & 5 has undergone eye surgery and seeks adjournment.

5. Only the counsel for the respondent no.1 appears.

6. Finding this petition to have remained pending for over three years and as a result whereof the proceedings in the suit, from which this petition arises, also stand stayed, the paper book has been perused to find whether there is any merit in the petition.

7. The respondent no.1 instituted the suit, from which this petition arises, against the respondents No.2 to 4/defendants and the petitioners/defendants no.4 & 5 seeking the reliefs of:-

i) declaration that the respondent no.1/plaintiff was the landlord of the respondents no.2 to 4/defendants with respect to property no.32/2A, part of 32-B, Ground Floor and First Floor, East Azad Nagar, Delhi; and, ii) for recovery of arrears of rent from the respondents no. 2 to 4/defendants.

8. The petitioners/defendants no.4 & 5 sought stay of proceedings in the said suit by filing an application under Section 10 of the CPC pleading; a) that the petitioners/defendants no.4 & 5 are the owners of and in physical possession of the property aforesaid; b) that the

respondents no. 2 to 4/defendants were the tenants under the petitioners/defendants no.4 & 5 in different portions of the said property; c) that the respondent no.1/plaintiff had illegally entered into another portion of the said property; d) that the petitioners/defendants no.4 & 5, prior to the filing of the suit from which this petition arises, filed a suit for permanent and mandatory injunction against the respondent no.1/plaintiff; e) that the petitioners/defendants no.4 & 5, prior to the institution of the suit from which this petition arises had also filed a suit for eviction of the respondents/defendants no.2 to 4 from the premises; f) that yet another suit filed by respondent no.1/plaintiff against the petitioner/defendants no.4 & 5 for declaration was also pending; and, g) that the issues which arise for adjudication in the suit from which this petition arises, were directly and substantially in issue in the said earlier proceedings as well.

9. Learned Civil Judge has by the impugned order dismissed the application under Section 10 of the CPC aforesaid of the petitioners/defendants no.4 & 5 reasoning a) that the respondent no.1/plaintiff had in the suit of which stay was sought, had not sought any declaration of his title to the property and had only sought a declaration of being the landlord of the respondents no.2 to 4/defendants with respect to the property aforesaid and since the respondent no.1/plaintiff was not a party to the suit filed by the petitioners/defendants no.4 & 5 against the respondents no.2 to 4/defendants, findings of the court would not be binding on him; b)

that the respondents no. 2 to 4/defendants in their written statement had already admitted the respondent no.1/plaintiff to be their landlord; c) that moreover, in the proceedings filed by petitioners/defendants No.4 & 5 against the respondents no.2 to 4/defendants, the respondent No.1/plaintiff was not a party; and, d) that there was thus no scope for any conflicting judgments.

10. Counsel for respondent no.1/plaintiff on enquiry states that the respondents no.2 to 4/defendants are still in possession of portions of the property proceedings for eviction wherefrom are still pending.

11. Counsel for respondent no.1/plaintiff however states that since the filing of this petition, the suit filed by petitioners/defendants No.4 & 5 against the respondent no.1/plaintiff for mandatory and permanent injunction being CS (OS) No. 354/2011 of this Court has been disposed of vide order dated 17th September, 2014 on the basis of the undertaking given by the respondent no.1/plaintiff to not dispossess the petitioners/defendants no.4 & 5 and their tenants and leaving it open to the parties to have their rights in the property adjudicated in appropriate proceedings.

12. Counsel for the respondent no.1/plaintiff also states that since the filing of this petition for eviction, the suit filed by the respondent no.1/plaintiff for declaration and the proceedings initiated by the petitioners/defendants no.4 & 5 for ejectment/eviction of respondents no.2 to 4/defendants are all pending in the same court of learned Senior Civil Judge-cum-Additional Rent Controller, East. It is further stated that the suit from which this petition arises, is also before the

same court.

13. In the aforesaid scenario, once all the proceedings are before the same court, no case for interference with the order impugned in this petition or for awaiting the counsel for the petitioners is made out.

14. The petition is dismissed.

15. Needless to say, the interim order stands vacated.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2017

mw