

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2112 OF 2018

Smt. Shanta Sanjiv Shetti
And Anr.

...Petitioners

Versus

Shri. Abhay Mohanlal Chopda

...Respondent

....

Ms. Smita Gaidhani, Advocate for the Petitioners.

Mr. R.D. Soni i/b. Ram & Co. for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 3rd OCTOBER, 2018

P.C.

1. Heard Ms.Smita Gaidhani, learned counsel for the petitioners and Mr.R.D. Soni, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 03.01.2018 passed by the learned District Judge-8, Nashik below exhibit-22 in Civil Appeal No.133 of 2015. By that order, the learned District Judge allowed the application and framed additional issue and called upon the trial Court to decide that issue and transmit findings alongwith the record and proceedings.

3. Rule. Mr.Soni waives service. 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.

4. In support of this Petition, Ms Gaidhani submitted that by order dated 22.11.2012, below Exhibit-201, the learned trial Judge allowed the application for amending the plaint. By subsequent order dated 19.09.2013, the learned trial Judge has stated in his order that no additional issues be framed in view of the amendment. The said order is not challenged by the respondent-plaintiff and after the Suit was dismissed, pending the appeal, application Exhibit-22 is taken out under Order XLI, Rule 25 of the Code of Civil Procedure, 1908 on the ground that despite specific pleading in paragraph 6(a) of the plaint that the legal representatives of the deceased tenant are not entitled to proceed with the suit under the provisions of Section 5(11)(c)(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'), the said issue was not framed. She submitted that basically as the plaintiff did not challenge order dated 19.09.2013, the learned District Judge was not justified in framing the additional issue and remitting the matter to the trial Court for deciding the same.

5. On the other hand, Mr. Soni supported the impugned order. He submitted that as per the order dated 22.11.2012 below Exhibit-201, the plaintiff has added paragraph-6A in the plaint. He submitted that in paragraph-6A, it is specifically asserted by the plaintiff that the legal

representatives of the deceased defendant/tenant are not entitled to proceed with the suit under the provisions of the Act. By framing additional issue and permitting the parties to adduce evidence only on this limited issue, no prejudice would be caused to the defendants. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. By order dated 27.2.2018, notice for final disposal was issued. Accordingly, the parties have advanced detailed submissions. A perusal of the impugned order and in particular paragraph-2 thereof shows that on behalf of the defendants attention of the learned District Judge was specifically invited to the order dated 19.9.2003 by which the learned trial Judge directed not framing of additional issue in view of the amendment. The plaintiff did not challenge that order. Said submission was however not dealt with by the learned District Judge. Ms. Gaidhani submitted that after the death of the original defendant Sanjiv Kukra Shetti, the plaintiff filed application Exhibit-196 for bringing his legal representatives on record. Accordingly, Shashikala Ashok Shetti and Vandana Suresh Shetti were brought on record as defendants No.3 & 4 in the suit. Subsequently on the application made by the plaintiff at Exhibit-224, defendants No.3 & 4, namely, Shashikala Ashok Shetti and Vandana Suresh Shetti were deleted from the suit as also from

the appeal. Said aspect is also not considered by the learned District Judge.

7. In view thereof, the impugned order is set aside. Application Exhibit-22 filed by the plaintiff is restored to the file of the learned District Judge. The learned District Judge will deal with the contentions recorded in this order and any other contentions that may be agitated before him. The parties agree that they will appear before the learned District Judge on 8.10.2018 and for that purpose no fresh notice be issued to them. The learned District Judge is requested to dispose of the application Exhibit-22 expeditiously and in any case within four weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open. The learned District Judge will decide the application Exhibit-22 uninfluenced by the observations made in this order. Liberty is reserved to the parties to apply for expeditious disposal of the appeal. If such an application is made, the learned District Judge will pass appropriate order thereon. Rule is made absolute in aforesaid terms with no order as to costs.

8. All concerned parties, including the District Court, Nashik to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)