

Ms Shilpa Kapil for Petitioner.
Mr. Jaydeep Deo for Respondents No.1 to 6.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 05.05.2018 passed by the learned Chief Judge of Court Room No.1 of the Court of the Court of Small Causes at Bombay in Transfer Application No.1 of 2018 in T.E.Suit No.40/44 of 2012. By that order, the learned Judge rejected the application filed by the petitioner - defendant in T.E.Suit to transfer the Suit to Court Room No.16.

3. In support of this Petition, Ms Kapil invited my attention to paragraphs 3(a) and 3(b) of the Petition. She submitted that respondents No.1 to 6 instituted R.A.E.Suit No.2144/2263 of 2008 before the Small Causes Court at Mumbai against the present petitioner and respondent No.7 - M/s. Wall Street Finance Limited for recovery of possession of shops No.4 and 5, both, admeasuring about 1200 sq.ft. together with loft on the ground floor of the suit building known as "Noor Hospital" situate at 49, Mohammedali Road, Mumbai 400 003 (for short 'suit premises'). Respondents No.1 to 6 filed their examination-in-chief dated

01.08.2014 along with compilation of documents. Defendant also filed its say to the admissibility of the documents filed by respondents No.1 to 6 and the stage in R.A.E.Suit No.2144/2263 of 2008 is for the marking of the documents since 2014 and the Suit is pending in the Court Room No.16. The learned Judge rejected the application on the ground that respondents No.1 to 6 have instituted T.E.Suit in the year 2012 and since then no steps were taken by the defendant to get the matter transferred and the R.A.E.Suit is part heard. Application is made by the defendant at belated stage to transfer. The learned Judge further observed that the application moved is not moved with bonafide intention and is filed to delay the proceedings. Ms Kapil submitted that the documents sought to be relied by P.W.1 were given to the defendant only in December 2017 and immediately thereafter, the present application for transfer is filed on 18.12.2017. It, therefore, cannot be said that the defendant is trying to protract the proceedings and that the application is not moved with bonafide intention. She, therefore, submitted that the impugned order may be set aside thereby allowing the transfer application filed by the defendant. The proceedings of T.E.Suit No.40/44 of 2012 be transferred to Court Room No.16 and the proceedings may be clubbed along with R.A.E.Suit No. 2144/2263 of 2008.

4. On the other hand, Mr. Deo submitted that respondents No.1 to 6 have instituted R.A.E.Suit under Section 33 of the Maharashtra Rent Control Act, 1999 (for short 'Act') in the year 2008 invoking grounds inter alia under Sections 16(1)(e) - unlawful subletting, 16(1)(g) - reasonable and bonafide requirement and 16(1)(k) - non-user. Pending that Suit, respondents No.1 to 6 have instituted T.E. Suit under Section 41 of the Presidency Small Cause Courts Act, 1882 in the year 2012 on the ground that the share capital of respondent No.7-M/s. Wall Street Finance Limited is above 1 crore and in view of Section 3(1)(b), the provisions of the Rent Act are not applicable. He submitted that the

evidence in both the Suits cannot be said to be identical. He, therefore, submitted that no case is made out for clubbing the Suits together by transferring T.E.Suit to Court Room No.16, which is seized of R.A.E.Suit.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is rather a matter of record that respondents No.1 to 6 have instituted Suit under Section 33 of the Act in the year 2008 invoking grounds available under the Rent Act. Pending that Suit, they have also instituted T.E.Suit in the year 2012 on the ground that the provisions of the Rent Act are not applicable as the share capital of respondent No.7 is above Rs.1 crore. Thus, it cannot be said that evidence will be common in these two Suits. The Suits are based on different causes of action. In view thereof, I do not find that the learned Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab