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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1811 OF 2018

Shapoorji Pallonji and Company Pvt. Ltd.

... Petitioner

vs.

The New India Assurance Co. Ltd.

... Respondents

Mr. Sharan Jagtiani a/w. Mr. Vijay Dhuri i/b. Cyril Amarchand Mangaldas for the Petitioner.

Mr. V. Y. Sanglikar for the Respondent.

CORAM : A.K. MENON, J.

DATE : 18th SEPTEMBER, 2018

P. C.

1. By this Writ Petition the petitioner seeks to challenge an order dated 22nd March, 2018 Exhibit A in Case nos. 012 and 012A of 2003 whereby the petitioners application dated 1st August, 2017 seeking dismissal of the said two cases was rejected by the impugned order.

2. The impugned order holds that the cases could not be decided on the interim stage since the issue required evidence to be led and considered at the final hearing of the main application. Mr. Jagtiani therefore submits that considering the present legal position, the applications dated 1st August, 2017 ought to have been allowed

and the case nos. 12 and 12A of 2003 ought to have been dismissed by the Estate Officer.

3. In the present writ petition he seeks a writ of mandamus directing the Estate Officer to close the proceedings in the aforesaid two cases. Mr. Jagtiani relies upon the case of *Suhas H Pophale vs. Oriental Insurance Company Limited and its Estate Officer [2014]4 SCC 657* in support of his contentions.

4. In the course of submissions, I called upon counsel to indicate how any prejudice has been caused and whether the law as on date supported his view that the application for dismissal ought to have been allowed at the preliminary stage itself, to which he fairly submitted that there is no such precedent. However, according to him by virtue of the petitioner being tenant since 25th April, 1962, prior to commencement of the Act, no proceeding under said act could have been initiated against him and therefore he submitted that the proceedings are an exercise in futility.

5. I have heard the learned counsel at length and what becomes immediately apparent is the fact that the both Petitioner and Respondent herein have already filed their evidence and compilations of documents and keeping all points open the impugned order permits both sides to lead further evidence in the matter and adjourns the case for cross examination of the witnesses. It is therefore not in dispute

and as Mr. Jagtiani fairly concedes that the evidence in the matter on behalf of the petitioner was filed even before the application dated 1st August, 2017. This petition is in my view is an afterthought. An attempt to achieve summary closure. I find no reason to interfere with the impugned order in the Writ Jurisdiction of this Court. For the aforesaid reasons I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.
- (iii) It is made clear that the Court has not expressed its opinion on the merits of the matter and the Estate Officer will decide the case uninfluenced by the dismissal of this petition.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

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by Rajeshwari
Ramesh Pillai
Date: 2018.09.24
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