

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 957 OF 2019

Vimal Damaji Koli
And others

...Petitioners

Versus

John Shankar Kamathi
And others

...Respondents

....

Ms. Radhika Samant i/b. Pradeep Havnur, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 11th FEBRUARY, 2019

P.C.

1. Heard Ms.Radhika Samant, learned counsel for the petitioners, at length.
2. This Petition takes exception to the order dated 7.12.2018 passed by the learned Judge, Court Room No.23 of the Court of Small Causes at Mumbai below Exhibit-25 in R.A.N. Application No.72/SR of 2008. By that order, the learned trial Judge rejected the application taken out by the petitioners herein for staying the proceedings of R.A.N. Application till hearing and final disposal of L.E.C. Suit No.38/34 of 2008.
3. In support of this Petition, Ms.Samant strenuously contended that the petitioners had instituted suit being L.C. Suit No.276/1990 initially in the Small Causes Court at Bombay sometime in October, 1990. In view of the controversy as to whether the Small Causes Court, Bombay or the

City Civil Court, Bombay has the jurisdiction to entertain and try the suit against the gratuitous licensee, the plaint was ultimately returned to the Small Causes Court. The suit is renumbered as L.E.C. Suit No.38/34 of 2008. During pendency of the suit, the respondents filed R.A.N. Application No.72/SR of 2008 for fixing the standard rent. She submitted that basically the respondents are not the tenants in respect of the suit premises and are gratuitous licensee. It is, therefore, necessary to stay the proceedings of R.A.N. Application till disposal of L.E.C Suit No.38/34 of 2008. In any case, as the suit was original instituted in the year 1990, same need not be clubbed with R.A.N. Application. For all these reasons she submitted that the petition requires consideration.

4. In support of her submissions, she relied upon following decisions :

- i. **Amrita Bazar Patrika Private Ltd. & Ors. Vs. Jayanta Sengupta & Ors., 2009 SCC OnLine Cal 1804;**
- ii. **Challapalli Sugars Ltd. Vs. Swadeshi Sugar Supply Pvt. Ltd., AIR 1983 Cal 199;**
- iii. **P.V. Shetty Vs. B.S. Giridhar, (1982) 3 SCC 403; and**
- iv. **Dnyarioba Balbhim Salunke Vs. Sarjerao Dhondiba Salunke, (2014) 5 Bom CR 229.**

5. I have considered the submissions advanced by Ms.Samant. I have also perused the material on record. As mentioned earlier, the petitioners had instituted a suit being L.C. Suit No.276/1990 in the year 1990 against the respondents alleging that they are the gratuitous licensees

in respect of the suit premises. In view of the controversy about whether the Small Causes Court, Bombay or the City Civil Court, Bombay has the jurisdiction to entertain and try the suit against the gratuitous licensees, the suit was transferred from one Court to other. Ultimately in view of the decision of the Apex Court in **Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar, (2013) 15 SCC 358**, the plaint is returned to the Small Causes Court, Bombay and the suit is renumbered as L.E.C. Suit No.38/34 of 2008.

6. The respondents filed standard rent application, being R.A.N. Application No.72/SR of 2008, some time in 2008 for fixation of the standard rent. Ms.Samant Submitted that the application itself is not tenable as the respondents are not tenants and are gratuitous licensees.

7. At this stage, it cannot be concluded either way. The Court cannot proceed on the premise that the respondents are the gratuitous licensees or tenants. Same is the subject matter of the suit and on the basis of the evidence on record, the trial Court will be in a position to decide that issue. Suffice it to say that at this juncture whether the respondents are tenants or gratuitous licensees cannot be decided.

8. In paragraph-5 of the impugned order, the learned trial Judge noted that the parties in both the proceedings are same and subject matter is also same. However, the matter in issue in standard rent application is

not directly and substantially in issue in the suit instituted by the petitioners. In paragraph-6, the learned trial Judge observed that the issues involved in both the proceedings are not identical. The learned trial Judge, therefore, rejected the application.

9. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application.

10. Ms. Samant relied upon the decision of **Amrita Bazar Patrika Pvt. Ltd.** (supra). A perusal of that decision shows that in that case there were two suits being C.S. No.302/2006 and C.S. No.311/2006. In view of pendency of C.S. No.302/2006, prayer was made for staying the proceedings of Suit being C.S. No.311/2006. In my opinion, said decision is not applicable to the facts of the present case where two suits are not pending and the proceedings pending are one eviction suit and the other fixation of standard rent application.

11. Insofar as the decision of **Challapalli Sugars Ltd.** (supra) is concerned, in that case also there were two suits, one filed in Calcutta and other in Andhra Pradesh. The said decision is also, therefore, not applicable to the facts of the present case.

12. Insofar as the decision of **P.V. Shetty** (supra) is concerned, in that case, the eviction suit was filed on the ground of arrears of rent. Prior to institution of that suit, the tenant had filed application for fixation of

standard rent. It is in that context, the Apex Court observed that determination of standard rent will have bearing on the suit instituted. In that case, the accepted position was that the appellant would be entitled to protection of Karnataka Rent Control Act, 1961 only if fair rent was fixed at Rs.500/- or below per month. In view thereof, said decision is also not applicable to the facts of the present case.

13. Insofar as the decision of **Dnyarioba Balbhim Salunke** (supra) is concerned, in that case also there were two suits, namely, R.C.S. Nos.254/2011 and 354/2012. In view thereof, said decision is also not applicable to the facts of the present case.

14. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the petition fails and the same is dismissed.

15. The petitioners are at liberty to file application before the trial Court for de-tagging the suit and standard rent application with a request to dispose of the suit in a time bound manner. If such an application is made, the learned trial Judge will pass appropriate order keeping in mind the fact that the suit was originally instituted in the year 1990. Order accordingly.

(R. G. KETKAR, J.)