

Mr. Mahendra T. Bhingardive for Petitioner.

P.C. :

2. This Petition takes exception to the order dated 22.06.2018 passed by the learned Judge of the Court of Small Causes at Mumbai (Bandra Bench) below exhibit-48 in R.A.E.Suit No.449/860 of 2006 as also the order dated 10.10.2018 passed by the Appellate Bench of the Small Causes Court in Revision Application No.94 of 2018. By these orders, the Courts below rejected the application made by the petitioners for dismissal of R.A.E.Suit No.449/860 of 2006.

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the suit premises on the ground of non-user. He submitted that as the same ground is also invoked in the Suit instituted in the year 1983, the Courts below ought to have dismissed 2006 Suit. He has invited my attention to paragraph 6 of 1983 Suit where the plaintiff alleged that she requires the suit premises reasonable and bonafide for starting an industry in the suit premises. The plaintiff further contended that no hardship will be caused to the first defendant because the first defendant is not in need of the suit premises any more and is not at all using the same in as much as the first defendant has illegally allowed and / or inducted the defendants and permitted them to use and occupy the suit premises. He submitted that these averments constituted the ground of non-user. He has taken me through the Suit filed by the respondents in the year 2006 and submitted that the cause of action in the earlier Suit and the cause of action in the subsequent Suit is one and the same. The Courts below, therefore, ought to have allowed the application exhibit-48.

4. I have considered the submissions advanced by Mr. Bhingardive. I have also perused the material on record. Paragraph 6 of the 1983 Suit reads thus,

“6) The plaintiffs further say that the said premise are reasonable and bonafide required by the plaintiffs for occupation by themselves in as much as two sons of deceased plaintiff have become major and have one them has qualified himself as a Mechanical Engineer and hence the deceased plaintiff wanted to start own industry with the help of her two sons and in order to accommodate her two sons, the plaintiff required the said premises reasonable and bonafide for starting an industry in the said premises. Plaintiff says that no hardship will be caused to the first defendant because the first defendant is not in need of the said unit any more and is not at all using the same at all, in as much as the first defendant has illegally allowed and / or inducted the defendant Nos.2 and 3 in the said premises and permitted them to use and occupy the said premises. Defendant Nos.2 and 3 are unauthorized occupants and have no legal right, title and interest of any nature

whatsoever in the said premises and are not at all protected under the provisions of the Bombay Rent Act and hence no hardship will be caused to the defendants if the defendants are required to vacate the said premises.”

5. A perusal of paragraph 6 of 1983 Suit, extracted hereinabove, clearly shows that plaintiffs have asserted that two sons of deceased plaintiff have become major and one of them is a qualified Mechanical Engineer. The deceased plaintiff wanted to start her own industry with the help of her two sons and in order to accommodate her two sons, the plaintiff requires the suit premises reasonable and bonafide for starting an industry in the suit premises. It is in that context, plaintiffs asserted that no hardship will be caused to the defendant No.1 as the defendant No.1 is not using the suit premises. Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act') reads thus,

“16. When landlord may recover possession.-

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.”

6. A perusal of Section 16(1)(n), extracted hereinabove, shows that the requisite ingredients for invoking the ground of non-user are that the plaintiff must assert that the premises have not been used by the defendants for a continuous period of six months immediately preceding the date of filing of the Suit without any reasonable cause. The said ingredients are totally absent in paragraph 6 of 1983 Suit. This aspect is considered by the Courts below. In paragraph 3, the Appellate Bench observed that the 1983 Suit was instituted on the grounds of arrears of rent, bonafide requirement and subletting. The 2006 Suit is instituted on the ground of non-user. The cause of action in both the Suits is different.

For the reasons recorded by the Courts below, I do not find that the Courts below have committed any error warranting interference under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. As the Suit of 1983 is still pending, the learned trial Judge shall decide the Suit as expeditiously as possible, and in any case, on or before 31.12.2019.

7. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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