

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6616 of 2019

The Society of Our Lady of Glory and others ... Petitioners
Vs.
M/s. Aboobakar Mohamed Chhapra & Company
and another ... Respondents

Mr. Hasmit Trivedi i/b. Mr. Devendra Pawar for Petitioners.
Mr. Rajesh S. Patil for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 12, 2019

P.C. :

Not on Board. At the request of Mr. Trivedi, taken up in the production Board.

2. Heard Mr. Trivedi, learned Counsel for the petitioners and Mr. Patil, learned Counsel for respondents.

3. This Petition takes exception to the order dated 25.04.2019 passed by the learned Judge of the Court of Small Causes at Mumbai below exhibit-174 in R.A.E. Suit No.1050/5957 of 1971. By that order, the learned trial Judge rejected the application made by the petitioners-plaintiffs for clubbing and disposing of 7 Suits together.

4. The petitioners / plaintiffs are a Public Trust. They have instituted Suit against the defendants for recovery of possession. Earlier, petitioners had instituted several Writ Petitions in this Court challenging the common judgment and order dated 17.11.1990 passed by the Appellate Bench of the Small Causes Court in 7 appeals arising out of 7 Suits filed by the petitioners against the respondents-tenants. The matter

came to this Court and by order dated 07.07.2004, this court allowed the Petitions. This Court held that petitioners-plaintiffs' case falls under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') and that the plaintiffs have established that their requirement is both, reasonable as also bonafide. In so far as the question of comparative hardship is concerned, this Court referred to the decision in ***Fazal & Co. Vs. Mulla Abbasbhai Kadrili Abdulji Trust*, 1988 Bom.C.R. 216**, where this Court has held that even in case of a landlord who is a trustee of a public charitable trust, Section 13(2) of the Act is attracted. In paragraph 14, this Court observed thus,

“14. It can thus be noticed that almost all the reasons given by the Courts below for coming to the conclusion that the petitioners had not proved the requirement of the suit premises are erroneous. The Courts applied a wrong test that even in case of petitioners who are the trustees of a public charitable trust they were required to prove the requirement reasonable and bonafide. The matter is however required to be remanded back to the trial Court for considering the question of hardship. In *Fazal & Co. Vs. Mulla Abbasbhai Kadrili Abdulji Trust*, 1988 Bom.C.R. 216, this Court has held that even in case of a landlord who is a trustee of a public charitable trust, Section 13(2) of the Act is attracted. The Trial Court has held that greater hardship would be caused to the petitioners by refusing to pass a decree than to the respondents by passing a decree, if question of hardship was required to be considered. The Appellate Court has held that the Trial Court has recorded the said finding without going through the evidence of the defendants separately in each cases. There were 7 suits and 7 defendants. Hardship of each of the respondents who were the defendants in separate suits is required to be considered separately. The Appellate Court has rightly held that the issue of hardship is required to be considered individually in each case which has not been done by the trial Court. However, the Appellate Court has also not gone into the question of hardship individually. The hardship that is likely to be caused to each of the respondents would be required to be seen qua him separately and compared with the hardship of the petitioners. As this has not been done, remand is necessary on this Court.”

5. This Court thereafter considered submissions advanced by the learned Counsel appearing for the parties that since considerable time

has passed since the decision of the appellate Court, situation could have undergone substantial change and the parties should be given an opportunity to adduce additional evidence. The learned Counsel agreed that in the event the parties so desire, they should be permitted by the trial Court to adduce additional evidence, if any. In view thereof, this Court permitted all parties to adduce additional evidence in the trial Court, if they so desire and requested the trial Court to decide the Suit as expeditiously as possible and in any event within a period of one year.

6. Aggrieved against this order, S.L.Ps were preferred before the Apex Court, which were dismissed. The plaintiffs took out application exhibit-174 for clubbing all the Suits together and disposing of the same together at the same time. By the impugned order, the learned trial Judge rejected the application.

7. In support of this Petition, Mr. Trivedi strenuously contended that as the issue of hardship is to be decided and the plaintiffs are relying upon the evidence in support of their case in all the Suits, all the Suits should be tried together and disposed of together at the same time. He has reiterated the submissions that were advanced before the trial Court. He submitted that evidence of all the witnesses of the plaintiffs is identical and the case of the plaintiffs that hardship would be caused to them if the Suits are dismissed is also common in all the Suits. Thus, the issue of comparative hardship of the plaintiffs in all the Suits is similar. It is, therefore, necessary to club all the Suits together and dispose of the same together.

8. On the other hand, Mr. Patil supported the impugned order. He submitted that out of 7 Suits, evidence in 2 Suits is over and the defendants have also concluded their arguments in 2 Suits. In so far as other 5 Suits are concerned, they are at different stages, and therefore,

the learned trial Judge rightly rejected the application. He, therefore, submitted that no case is made out for interfering with the impugned order.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have already reproduced paragraph 14 of this Court's order. In paragraph 8 of the impugned order, the learned trial Judge noted that in some of the Suits, P.W.1 is under cross-examination. In some of the Suits, the evidence of the plaintiffs is closed. In some of the Suits, evidence of both the sides is over and the present Suit is posted for final arguments. The learned trial Judge further noted that considering the direction issued by this Court to decide the hardship of each of the defendants separately and compare with hardship of the plaintiff, it is not desirable to allow the present application.

10. For the reasons recorded in paragraph 8 of the impugned order as also in the light of paragraph 14 of this Court order dated 07.07.2004 in Writ Petition No.3510 of 1991 and other companion Writ Petitions, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab