

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8872 OF 2019**

Raj Krishanlal Marwah (since deceased)

Through Legal Heirs and Others

...Petitioners

vs

Govind H. Rohira And Ors.

...Respondents

.....

Mr. Rajesh G. Singh, i/b. Legal Liasions, for the Petitioners.

Mr. R.J. Thakkar, a/w. Ms. Pooja R. Thakkar, for Respondent No.5.

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CORAM : S.C. GUPTE, J.

DATED: SEPTEMBER 4, 2019

P.C.:

. Heard learned Counsel for the parties.

2. This writ petition challenges an appellate order passed by the Court of Small Causes at Bombay in a revision application. The Petitioners are original plaintiffs in an eviction suit before that court, who had leased the suit premises, which consist of an open plot of land, to Respondent Nos. 1 to 4, who, in turn, created a sub-lease in favour of Respondent No.5, who is the main contesting Respondent, and who is defendant no.5 before the trial court. The plaintiffs had originally filed a suit in this Court claiming recovery of possession on the basis of termination of the lease in 1975. That suit was filed in the year 1976. This Court was of the view that that suit had to go before the Court of Small Causes under the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947. Accordingly, the plaint was ordered to be returned

for presentation to the proper court under Order 7 Rule 10 of the Code of Civil Procedure. In pursuance of that order, the plaint was returned and presented to the Court of Small Causes. During the pendency of that suit, the plaintiffs have filed the present suit on the basis of the new Rent Act, namely, the Maharashtra Rent Control Act, 1999 read with the Presidency Small Causes Courts Act, 1887. It is the case of the plaintiffs that the lease has already been terminated in the year 1975, and there being no protection now available to the defendants under the new law of rent control, the leased premises being an open plot of land, they are entitled to file a new suit for recovery of possession. Whilst the Court did not dispute that they could file a new suit to recover possession, based on their termination of the lease, the Court held that the plaintiffs had to elect between the two suits, that is to say, the first suit filed under the Bombay Rent Act, and the new suit filed under the Presidency Small Causes Courts Act.

3. There is no infirmity in the order. The argument of the plaintiffs is that the protection available to the tenant of an open plot of land earlier, under the old law, is no longer available under the new Rent Act. It is submitted that the eviction suit based on the new Rent Act must be treated as a new cause of action, since the very filing of it indicates termination of a lease. It is, however, pertinent to note that the cause of action pleaded in the new suit is the same as the cause of action in the old suit, namely, termination of the lease in the year 1975 and the defendants' refusal to vacate the premises despite such termination. If that is so, the plaintiffs, obviously, cannot prosecute two separate remedies on the same cause of action, though remedies may be claimed

under two different provisions of law. The grievance, after all, is the same, namely, the defendants' refusal to vacate the suit premises upon termination of the lease. It is this grievance which affords a cause of action to the plaintiffs, and not the remedy available in law.

4. Upon this being pointed out, learned Counsel for the plaintiffs submits that his clients may prosecute their first suit and withdraw the subsequent suit, reserving, however, liberty to prosecute a new suit under the Maharashtra Rent Control Act based on a fresh termination of lease, if they are so advised. The Respondents can have no objection to this course suggested by the plaintiffs.

5. Accordingly, the writ petition is disposed of by clarifying that the plaintiffs may choose one of the two pending actions. In case they choose their option of prosecuting the original suit, that cannot come in the way of any fresh termination of lease and prosecution of a fresh recovery action based on such termination by them under the new law of rent control, namely, the Maharashtra Rent Control Act, 1999.

6. The time granted to the Petitioners to make the election by the trial court, is extended by a period of two weeks from today.

(S.C. GUPTE, J.)

Smita
Gonsalves

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