

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 30151 OF 2017

Smt. Kokila Kanakrai Vyas

And others

...Petitioners

Versus

Mrs. Jyoti Suresh Vora

...Respondent

....

Mr. Sanjiv A. Sawant, Advocate for the Petitioners.

Mr. Nandakumar G. Karekar, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 09th JANUARY, 2019

P.C.

1. Heard Mr. Sanjiv A. Sawant, learned counsel for the petitioners and Mr. Nandkumar G. Karekar, learned counsel for respondent, at length.

2. This petition takes exception to the order dated 15.9.2017 passed by the learned Judge, Court Room No.32 of the Small Causes Court at Mumbai, Bandra Branch below Exhibit-45 in R.A.E. Suit No.469/925 of 2008. By that order, the learned trial Judge rejected the application made by petitioner No.2 under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973.

3. Mr. Karekar has raised preliminary objection on the ground of maintainability of this Petition. He submitted that in terms of Section 34 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'), appeal lies before a Bench of two Judges of Small Causes Court against the order made by the Court of Small Causes, Mumbai exercising jurisdiction under Section 33 of the Act.

4. In view thereof, Mr. Sawant seeks permission to withdraw this Petition with liberty to file appeal along with application for interim relief before the Appellate Bench of the Small Causes Court, Mumbai. He assures that within two weeks from today, the petitioners will file appeal along with application for interim relief and serve copy on the other side within the same period. He submits that the petition was instituted in this Court on 31.10.2017. As the petitioners were prosecuting this Petition bonafide, the time spent by the petitioners in prosecuting this petition from 31.10.2017 till today may be excluded while considering the issue of limitation.

5. In view thereof, on the motion made by Mr. Sawant, the Petition is allowed to be withdrawn with liberty as prayed for and is disposed of as such. If the petitioners institute appeal along with application for interim relief within two weeks from today, the time

spent by them in prosecuting this petition from 31.10.2017 till date shall be excluded while considering the issue of limitation as they were prosecuting this Petition bonafide. The petitioners shall press for interim relief before the Appellate Court. To enable the petitioners to press interim relief before the Appellate Court, the interim order operating in this petition from 10.11.2017 shall remain in force for a period of three weeks from today and thereafter shall stand dissolved automatically. Continuation of interim order shall not be construed as an expression on merits of the case either way. The Appellate Court will decide the application for interim relief on its own merits and in accordance with law. All contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)