

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5319 OF 2019

Tulsidas Mrurai Bhagat

...Petitioner

vs.

Shivaji Narayan Ranavare

...Respondent

Ms. Preeti Walimbe for the Petitioner.

CORAM : REVATI MOHITE DERE, J.

DATE : 20th January, 2020

PC:

1. At the outset, the learned counsel for the petitioner seeks leave to amend to correct the date of the order in the prayer clause of the petition. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the petitioner.

3. By an order dated 19.7.2019, this Court (R.G.Ketkar, J.) issued notice to the respondent, returnable on 7.8.2019. Hamdust was permitted. Notice was to indicate that subject to the time constraint and convenience of the court, petition will be disposed of finally at the stage of admission, even if the respondent failed to appear despite service and that the petition would be heard on its own merits. This Court also granted ad-interim relief in terms of prayer clause (c). Private notice was served on the respondent and accordingly affidavit of service has been filed. It appears that the court notice returned unserved with the bailiff's report, that the respondent was not residing at the given address and had shifted to Lonawala. Pursuant thereto,

the learned counsel for the petitioner sought leave to amend the petition and furnished the new address of the respondent. Accordingly, amendment was carried out. On 11.12.2019, fresh notice was issued to the respondent, returnable on 20.2.2020. Hamdust was permitted. Notice was to indicate that the petition will be heard finally, at the stage of admission, even if none appears for the respondent. Private notice was also permitted. Office noting shows that fresh notice was issued and the same has been duly served as per the bailiff's report. Learned counsel for the petitioner has also filed an affidavit stating that the petitioner has served the respondent by private notice.

4. Despite service none appears for the respondent. In view of the order dated 11.12.2019, the petition is taken up for hearing.

5. By this petition, the petitioner has impugned the order dated 22.10.2018 passed by the learned 3rd Joint Civil Judge, Senior Division, Kalyan below Exhibit-1 in R.C.S.No.51 of 1996, by which the learned Judge passed the following order which is impugned in the present petition .

“There are in all 29 suits between the same landlord and his tenants, arising out of one and same suit property regarding different tenements. Out of which only this suit is for judgment whereas other suits are ending for cross examination of plaintiff. In all these matters issue of title of the plaintiff is under challenge. Therefore, in view of above said situation, I found proper to decide all these 29 suits at the same time. Hence, in this matter judgment will be delivered alongwith other 28 suits.”

6. Learned counsel for the petitioner (original plaintiff) submits that the respondent (original defendant) had earlier filed two applications, one for clubbing all the 29 suits and for trying the said suits together and disposing of the said 29 suits by a common Judgment and Decree and another application requesting that the cross of the plaintiff be recorded in one suit i.e. R.C.S.No. 51 of 1996 and the same be ordered to be read and recorded in all other suits by changing the respective exhibits. She submits that both the said applications were rejected by the Trial Court vide orders dated 31.1.2011 and 24.8.2018 respectively. She submits that, infact, the roznama annexed to the petition will show that no application was filed by the respondent and nor was the petitioner heard before the impugned order dated 22.10.2018 was passed. Learned counsel for the petitioner relied on the roznama which is at Page 53 of the petition. She submits that, by the impugned order, the learned Judge has thought it fit to decide all the 29 suits at the same time, when, in fact, all the suits are pending at different stages. She submits that, although the petitioner is the landlord in all the 29 cases, the tenants and tenements are different. She submits that, one case has reached the stage of final arguments and in the remaining cases, most of them are pending for cross examination.

7. As noted above, despite service none appears for the respondent.

8. Perused the papers including the impugned order dated 22.10.2018. The petitioner is the landlord (original plaintiff) in all the 29 suits

instituted by the petitioner against the 29 tenants. Admittedly, the first application filed by the respondent for clubbing all the 29 suits and for trying the said suits together and for disposing of the said 29 suits by a common Judgment and decree was rejected by the learned Judge by order dated 31.1.2011. The said order is at Page 32 of the petition. Learned Judge on merits rejected the said prayer observing that, although the petitioner (plaintiff) is the same in all the 29 suits, each case in the suit is against a separate defendant and that the defendant in each of the case is holding a separate tenement and that the premises is not common. Similarly, the second application filed by the respondent praying that the cross examination of the petitioner (original plaintiff) recorded in R.C.S. No.51 of 1996 ordered to be read and recorded in all other suits only by changing the respective exhibits was also rejected by the learned Judge vide order dated 24.8.2018. The said order is at Page 41 of the petition. In the said order, the learned Judge has observed that the hearing in R.C.S.No.51 of 1996 is pending for final arguments since long, whereas the evidence in other 28 cases, the cross examination is yet to start. Reiterating what is stated in the earlier order that the defendants were different as well as the suit property, the said prayer was not entertained. A perusal of the Roznama dated 22.10.2018 prima facie does not show that any application was filed by the respondent. Admittedly, the petitioner (original plaintiff) was not heard when the impugned order below Exh.1 in R.C.S.No. 51 of 1996 was passed. The learned Judge having regard to the earlier orders, ought not to have entertained any prayer of the respondent. The observations made by the learned Judge that all the 29 suits

need to be decided at the same time is completely perverse and more particularly, when similar prayers were rejected by the trial court on two earlier occasions. As noted above, the evidence in R.C.S.No. 51 of 1996 is already over and the matter is posted for final arguments, whereas, the other suits are pending for cross examination of the petitioner. The learned Judge was therefore, not justified in clubbing the 29 suits together when all the suits are different as well as grounds on which eviction is sought against the defendants different. Considering the aforesaid, the impugned order cannot be sustained and as such the same is quashed and set aside. The learned Judge to proceed with the final arguments in R.C.S. No.51 of 1996 independent of the pendency of other suits a decision thereon. Considering that all the suits are old, the said suits to be disposed off expeditiously.

9. Petition is disposed off in the aforesaid terms.
10. All the concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.