

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

**WRIT PETITION NO.7870 OF 2018
WITH
WRIT PETITION NO.7853 OF 2018**

Smt. Bina Bhalai Chowdhury .. Petitioner
Versus
Shri. Alok Kumar Bhanwarlal Tholiya & Ors. .. Respondents

Ms. Mukta Gobse for the Petitioner in both the Matters.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th November, 2022

PC.

1. Heard.

2. The petitioner/tenant initiated R.A.D. Suit No.2145 of 1990, whereas the respondent/landlord initiated two suits for eviction being R.A.E. Suit No.208/624/1992 and R.A.E. Suit No.339/616 of 2013.

3. Admittedly, in all these three suits after the order of consolidation, trial has commenced.

4. The petitioner/tenant moved an application Exhibit-52 in R.A.E. Suit No.2145 of 1990 so also in other two suits vide Exhibit-55 for framing of common issues which is rejected vide order impugned dated 30th January, 2018. As such, these petitions.

5. The contentions are, even if the suits were consolidated, it was the duty of the Court below to order of framing of the common issues in all three suits as the jurisdictional fact, so also the adjudicatory facts are similar. According to her, the Court below by framing different issues in different suits has committed procedural error thereby causing prejudice to the petitioner, as it will be difficult for the petitioner to lead the evidence particularly as regards the discharge of burden. So as to substantiate aforesaid contentions, she has drawn support from the judgment of Delhi High Court reported in **67 (1977) DLT 189, S. C. Jain v/s Bindeshwari Devi**, wherein similar issue is claimed to be dealt with. In addition to above, reliance is also placed on the Supreme Court judgment in the matter of **Chitivalasa Jute Mills v/s Jaypee Rewa Cement** reported in **AIR 2004 SC 1687**.

6. I have appreciated the said submissions.

7. The suit for the petitioner is for declaration of having the tenancy right over the larger area than the area which is mentioned in the other two suits which are for eviction.

8. Having regard to the rival pleadings in all the three suits, the issues were framed and the Trial Court has passed an order of consolidation of all the three suits.

9. I am informed that the rival parties to the suit have already tendered their affidavit of examination-in-chief and the

respondent/landlord who is plaintiff in the eviction suit is in the witness box.

10. The aforesaid factual matrix establishes that the Trial in the suit has commenced.

11. Once the Trial has commenced in the suit, the clock cannot be set in reverse direction thereby directing the framing of common issues in all the three suits, as the petitioner/tenant has already missed the bus at the relevant time, as it was incumbent on the part of the petitioner to move such a prayer at an appropriate stage. Though, it is claimed that the proceedings were decided before the entering of the landlord into the witness box, still this Court is required to be sensitive to the fact that the present petitions remained pending since 2018 i.e. for last four years and the petitions were adjourned at the behest of the petitioner time and again.

12. In this aforesaid background, the claim put forth by the petitioner which pertains to the procedural law cannot be required to be looked into in the extraordinary jurisdiction thereby causing interference in the smooth conduct of the suit proceedings. As such, no case for interference in extraordinary jurisdiction is made out.

13. Both the petitions as such stand dismissed.

[NITIN W. SAMBRE, J.]