

Sonali

Digitally
signed by
SONALI
MILIND
PATIL
Date:
2023.07.11
10:48:41
+0530

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

WRIT PETITION NO. 8363 OF 2023

Dr. Surendra Chhotelal Garg

deceased through legal heirs

Mrs. Aruna sd/o. Dr. Surendra Garg & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Ashok M. Saraogi, for the Petitioners.

Mrs. V. S. Nimbalkar, AGP, for Respondent No.1-State.

Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare, for Respondent Nos. 3 to 10.

CORAM : MADHAV J. JAMDAR, J.

DATED : 7th JULY 2023

P.C. :

1. Heard Mr. Saraogi, learned counsel appearing for the Petitioners,

Mrs. Nimbalkar, learned AGP appearing for Respondent No.1-State

and Mr. Thorat, learned counsel appearing for Respondent Nos. 3 to

10.

2. By the present Writ Petition filed under Article 227 of the

Constitution of India, the Petitioner i.e. original Appellant in Appeal

(2a) No.5 of 2016 pending before the Appellate Court of Small Causes

(Bandra Branch), Mumbai is challenging the legality and validity of the

Sonali

order dated 8th June 2023 passed by the Appellate Bench of Small Causes Court, Mumbai below Exhibit-45 in said Appeal. By the impugned order, said application at Exhibit-45 was rejected. By the said application at Exhibit-45, the Appellant i.e. original Defendant No.2 has prayed that following issue be framed:-

“Whether the Court has jurisdiction to entertain and try the suit in view of the provisions of Sec. 3(3) of Maharashtra Rent Control Act, 1999.”

3. The learned Appellate Court while dismissing the said application has inter alia held that the Court has already considered the said issue and given specific finding.

4. It is the contention of Mr. Saraogi, learned counsel appearing for the Petitioners that the learned Appellate Court while giving the said reasoning for rejection was making reference to issue No.(4A) which has been decided by the learned Trial Court. The said issue No.(4A) reads as under:-

“4A) Whether defendant No.2 proves that for want of relationship of landlord and tenant between plaintiff and defendant No.1, this Court has no jurisdiction to try and

decide this suit?”

5. Mr. Thorat, learned counsel appearing for Respondent Nos. 3 to 10 submits that the additional issue which is sought to be framed by the Petitioners is already covered in the aforesaid issue No.(4A). There is substance in the said contention.

6. Mr. Thorat, learned counsel appearing for Respondent Nos. 3 to 10 also submitted that as the proposed issue is concerning legal aspects, the Petitioners can raise contentions in that behalf at the time of arguments. Mr. Saraogi, learned counsel appearing for the Petitioners after taking instructions states that he is agreeable to said course of action.

7. Therefore the Writ Petition challenging order dated 8th June 2023 rejecting application at Exhibit-45 is dismissed. However, it is clarified that the Petitioners are at liberty to advance the submissions with respect to the said point which is reflected in the proposed issue.

8. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]