

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO.12117 OF 2023**

New Era Dwellers and Constructions Pvt. Ltd.

...Petitioner.

V/s.

Mohammad Ayub Mehboobali and Ors.

...Respondents.

Mr. T. D. Deshmukh a/w. Mr. H. D. Chavan, Sulagna Mohanty, Mr. Anshuman Deshmukh and Kshema Mahuli for the Petitioner.

Mr. S. B. Amin a/w. Mr. Pratik Amin for the Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 9th NOVEMBER, 2023.

P.C.:-

1. Heard Mr. Deshmukh, learned counsel for the Petitioner and Mr. Amin, learned counsel for the Respondents.

2. The challenge in the Petition is to order dated 11/9/2023 passed in Revision Application No.6/2023, whereby Revision Application was partly allowed and order of “no-cross” of PW-1 passed against the Defendant Nos.2 and 14 was set aside.

3. Mr. Deshmukh, appearing for the Petitioner submits that after the “no cross” order as regards PW-1 was passed, the evidence of PW-2 has started and even as regards PW-2 order of “no cross” has been passed. He

submits that Defendant No.2 and 14 are not serious in proceeding with the cross examination thereby prejudicing the entire proceedings which have been filed under section 16(1) (i) and (k) of the Maharashtra Rent Control Act. He submits that if cross examination is completed in a time bound manner, the same would avail to the benefit of all the parties.

4. Mr. Amin, learned counsel appearing for the Respondent submits that the cross examination of PW-1 has already started and that the matter is fixed for further cross examination of PW-1 on 1/12/2023. He submits that within 2 dates he will finish the cross examination viz., on 1/12/2023 and the next adjourned date. He further submits that out of 27 defendants, 25 defendants have already settled and only in respect of defendant No.2 and 14 negotiations are going on and the matter is likely to be settled.

5. By the impugned order, the order of rejection of the Application for amendment was upheld by the Appellate Court and all that was granted by the Appellate Court was setting aside of “no cross” order. The order of “no cross” passed by the trial Court dated 23/11/2022 against defendant Nos.2 and 14 does not record that there has been substantial delay by Defendant Nos.2 and 14 in availing of the opportunity of cross examination. The appellate Court has rightly observed that no cross order

passed against defendant Nos. 2 and 14 will cause prejudice to the valuable rights of the defendants. As such in my opinion there is no infirmity in the impugned order.

6. The submission of learned counsel for the Respondent that cross examination will be completed on fixed date i.e. 1/12/2023 and next adjourned date thereafter is accepted as an undertaking.

7. Needless to clarify that in the meantime if negotiations fructify and if the matter is settled necessary consent terms can be entered into before the trial Court.

8. For the foregoing reasons, there is no merit in the petition. Petition stands dismissed. As the matter is of the year 2017 and it is filed under the provisions of Section 16(1) (i) of the Maharashtra Rent Control Act, the trial Court is requested to decide the same expeditiously.

(SHARMILA U. DESHMUKH, J.)