

Pallavi

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

**WRIT PETITION NO.818 OF 2023
WITH
INTERIM APPLICATION NO.896 OF 2023
IN
WRIT PETITION NO.818 OF 2023**

Shoukat Hussain Begg ...Petitioner
Versus
Vayath Narikutty Rammchandaran
Decd. Thr. LHRs. Mrs. Sumati Ramchandran
Vayath Narikutty and Ors. ...Respondents

- Ms. Anu Ravi Khanna, for the Petitioner.
- Mr. B.K. Raje i/b. M.G. Gawde for Respondent No.2c.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 21st JULY 2023**

P.C.:

1. Heard Ms. Anu Khanna, learned counsel appearing for the Petitioner and Mr. Raje, learned counsel appearing for the Respondents.
2. The Petitioner who is the original plaintiff, by way of the present Writ Petition filed under Article 227 of the Constitution of India, is challenging the legality and validity of the order dated 16th November 2019 passed by the learned Judge, Small Causes Court, Mumbai below Exh.57 in L.E. Suit No.105/130 of 2012 as well as the judgment and order dated 29th July 2022 passed by the learned Division Bench of Small Causes Court, Mumbai in Revision Application No.43 of 2020. By

said order dated 16th November 2019, application bearing Exh.57 filed by Respondent No.2c – Prashant Keshav Parab to implead him as party defendant in L.E. Suit No.105/130 of 2012 was allowed. In the revision, the said order has been confirmed.

3. Before considering the rival contentions of Ms. Khanna and Mr. Raje, learned counsel, it is necessary to set out following factual matrix:-

- (i) Undisputedly Keshav Ladoji Parab was the owner/ landlord of the entire building in which the suit premises are situated. The present Petitioner is the tenant of the entire first floor of the said building (hereinafter referred to as “the entire tenanted premises”). Respondent No.2c – Prashant Keshav Parab is the heir and legal representative of the owner/landlord i.e. deceased Keshav Ladoji Parab.
- (ii) One Mr. V.N. Ramchandran filed R.A.D. Suit No.855/1488 of 2008 on 22nd July 2008 *inter-alia* claiming declaration of his tenancy with respect to three rooms out of the entire tenanted premises. It is the contention of the present Petitioner in the said suit that said V.N. Ramchandran was merely paying-guest of three rooms.
- (iii) Thereafter, the landlord of the building i.e. Keshav Ladoji Parab filed eviction suit bearing R.A.E. Suit No.1988/2008

of 2008 under the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Rent Act”) against the present Petitioner as defendant No.1 as well as said VN. Ramchandran as defendant no.2 seeking eviction of the entire first floor of the said building. Said suit was filed on 6th November 2008.

- (iv) On 3rd May 2012, the present Petitioner i.e. the Tenant of the entire 1st floor of the said building filed L.E. Suit No.105/130 of 2012 against said VN. Ramchandran for eviction on the ground that he was paying-guest of said three rooms.
- (v) In the suit filed by Keshav L. Parab bearing R.A.E. Suit No.1988/2008 of 2008 against Petitioner and said VN. Ramchandran, the following issues were framed :-

“ISSUES

1. Whether defendants are guilty of change of user of suit premises i.e. from residential to commercial?
 2. Is it proved that defendant no.1 has unlawfully sub let or transferred suit premises to defendant no.2 without consent of plaintiff?”
- (vi) The declaratory suit filed by said VN. Ramchandran being R.A.D. Suit No.855/1488 of 2008 was dismissed for default on 19th June 2017. While dismissing the said suit

for default the learned Judge of the Small Causes Court has observed that in the said suit the issues were framed on 20th June 2012 and the plaintiff i.e. said V.N. Ramchandran filed evidence affidavit on 12th October 2012 and thereafter, he has not appeared in the said suit. It is admitted position that the said suit was dismissed for default by order dated 19th June 2017 and the said order has not been challenged by said V.N. Ramchandran.

(vii) It is the contention of Ms. Anu Khanna, learned counsel appearing for the Petitioner that said V.N. Ramchandran had vacated the suit premises and he is not staying in the suit premises even before 19th June 2017.

(viii) The legal heir of original landlord i.e. Prashant Keshav Parab filed said application bearing Exh.57 on 30th August 2019 in the eviction suit filed by the present Petitioner against the said paying guest V.N. Ramchandran contending that he be directed to be impleaded as a party. Both the Courts have concurrently held that although the present Respondent No.2c is not a necessary party but he is a proper party.

In the light of above factual matrix, it is necessary to consider the rival submissions.

4. Ms. Khanna, learned Advocate of the Petitioner has relied on the judgment of the Supreme Court in the matter of *Kanaklata Das & Ors. Vs. Naba Kumar Das & Ors.*¹. She more particularly relied on paragraph 11.5 of the said judgment. In said paragraph 11.5, it has been held by the Supreme Court that a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. She submitted that by aforesaid criteria, Respondent No.2c is neither a necessary party nor a proper party.

5. It is admitted position on record that Respondent No.2c is the owner and landlord of the entire suit building. One flat of the suit building i.e. entire first floor is allotted on tenancy basis to the present Petitioner. Said V.N. Ramchandran is the paying-guest of three rooms out of entire first floor as per the contention of the Petitioner whereas it is the contention of the landlord that said V.N. Ramchandran was the unlawful sub-tenant. Admittedly, declaratory suit filed by him seeking declaration of tenancy rights has been dismissed and according to the Petitioner, he has vacated the suit premises. It is significant to note that although as per the contention of the Petitioner said V.N. Ramchandran has vacated the suit premises, still the Petitioner has not withdrawn the suit being L.E. Suit No.105/130 of 2012. It is very important to note the

1. (2018) 2 SCC 352

following issues framed in the said suit:-

ISSUES

1. Whether the plaintiff proves that the defendant is a licensee in respect of the suit premises?
 2. Whether the plaintiff proves that he terminated and revoked the license granted to the defendant to use and occupy the suit premises as a paying-guest?"
6. In the above background of the matter, it is important to note that the owner/landlord has filed eviction suit in 2008 against the present Petitioner as well as said V.N. Ramchandran. In the said suit, *inter-alia*, above-referred issue was framed regarding unlawful subletting or transfer of suit premises by the defendant No.1 i.e. present Petitioner to the Defendant No.2 i.e. V.N. Ramchandran without consent of Plaintiff i.e. Keshav L. Parab. It is very clear that after eviction suit has been filed by the landlord in 2008, after a period of about 4 years, the present Petitioner filed eviction suit in 2012 only against said V.N. Ramchandran as a shield to the said Suit bearing R.A.E. Suit No.1988/2008 of 2008.
7. The learned Judge of Small Causes Court, Mumbai while dismissing for default the declaratory suit of 2008 filed by said V.N. Ramchandran has observed that since 2012, said V.N. Ramchandran is not attending the said suit. In 2012, itself the said eviction suit has been filed by the Petitioner against said V.N. Ramchandran terming the said V.N. Ramchandran as paying-guest and the issue framed in that suit is

whether the plaintiff i.e. the present Petitioner proves that defendant i.e. said V.N. Ramchandran is a licensee and whether that license is terminated and the license is granted only to use and occupy the said premises as paying guest. Considering the nature of the controversy involved in all the suits and the issues framed therein, it is very clear that the said Respondent No.2c – Keshav Parab is either necessary party or in any case, proper party in the suit filed by the present Petitioner. If landlord is not impleaded as party then it is likely that behind his back finding that said V.N. Ramchandran was merely paying guest would be obtained. Therefore, this is not a case where interference under Article 227 of the Constitution of India is warranted. Writ Petition is dismissed with no order as to costs.

[MADHAV J. JAMDAR, J.]