

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.253 OF 2023

M/s. Ratnagiri Medical and Industrial Gases Pvt.
Ltd.

.. Applicant

Versus

Azimuddin Noormohammed Temrikar and Ors. .. Respondents

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- Mr. Nikhil Wadikar a/w. Mr. Pradip Zende i./by Mr. Nandu Pawar, Advocates for Applicant.
- Mr. Sudhir Prabhu, Advocate for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P.C.:

1. Heard Mr. Wadikar, learned Advocate for Applicant and Mr. Prabhu, learned Advocate for Respondents.

2. Civil Revision Application takes exception to order dated 31.12.2022 passed in Application filed below Exhibit-25 in Regular Civil Suit No.288 of 2022, which is at page No.119 of the Civil Revision Application.

3. Regular Civil Suit No.288 of 2022 is filed by four individual members of Temrikar family seeking declaration in respect of suit property. Defendant No.1 in that suit proceedings is M/s. Ratnagiri Medical and Industrial Gases Private Limited. The said Defendant filed an Application under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short '**CPC**') seeking dismissal of the suit in view of

jurisdiction of the Civil Court to try and decide the subject suit. It was contended by the Defendant that the Plaintiffs have already invoked jurisdiction of the Competent Authority / Competent Court which is the concerned District Court by filing an Appeal under the provisions of Section 7 of the Maharashtra Government Premises (Eviction) Act, 1956 (for short '**the said Act**') and hence the jurisdiction of the Civil Court is ousted.

4. Mr. Wadikar, learned Advocate appearing for the Defendant who is Applicant before me would submit that invocation of proceedings under the said Act are an independent cause of action and in view thereof with respect to the same cause of action the remedy of filing a Civil Suit is barred by the provisions of said Act. He has drawn my attention to Section 8-A of the said Act with respect to the jurisdiction of the Civil Court being barred as stated therein. Admittedly, the challenge in the suit proceedings before the Civil Court is to the eviction notice as also eviction order passed against the Temrikar family in respect of the suit property.

5. Record further reveals that the Temrikar family has already been evicted from the suit property and allotment of the suit property has subsequently been made to the Defendant No.1 in the suit proceedings by Defendant No.2.

6. Be that as it may, in so far as the impugned order is concerned, the jurisdiction of the Civil Court to try and entertain the

subject Regular Civil Suit No.288 of 2022 in the wake of pendency of the statutory Appeal filed by the Temrikar family under Section 7 of the said Act is to be seen. Copy of statutory Appeal is at Exhibit-A to Application.

7. Mr. Prabhu, learned Advocate appearing for the Respondent Temrikar in whose favour the impugned order happens to be passed would fairly submit that the Respondents who are Plaintiffs in Regular Civil Suit No.288 of 2022 have given instructions to him to withdraw the Regular Civil Suit No.288 of 2022 and prosecute the statutory Appeal filed under Section 7 of the said Act in respect of their cause of action.

8. Noting the instructions conveyed by Mr. Prabhu it is directed that Respondents namely the four Plaintiffs in Regular Civil Suit No.288 of 2022 are permitted by this Court to withdraw the suit proceedings pending before the Civil Judge Junior Division, Ratnagiri. Such withdrawal shall be effected by filing a *pursis* and placing a copy of this order before Trial Court within a period of one week from today.

9. Mr. Prabhu makes one more request to the Court in so far as the substantive relief sought for by the Temrikar family in the Suit who are Appellants there in the statutory Appeal which is filed. The said Appellants will now have to seek amendment. This Court certainly cannot allow and grant any amendment to the statutory

Appeal which is filed by the Temrikar Family. Mr. Prabhu in his usual fairness would also inform the Court that statutory Appeal is not numbered as yet but since Application seeking condonation of delay for filing the statutory Appeal under Section 7 of the said Act is still to be heard by the concerned District Court. Hence unless the delay stands condoned, it will not be possible for the Appellants to even move the appropriate Competent Court for seeking any rectification / amendment to their Application. However, if any such Application is made and if so permissible in law, the Competent Court may consider the same strictly in accordance with law. This is the maximum that this Court can say on the second grievance raised by Mr. Prabhu. With the above directions, it is held that the impugned order allowing the Suit proceedings is not sustainable. It is quashed and set aside. Application of the Petitioner under Order VII, Rule 11 of the CPC stands allowed.

10. It is further clarified that the Competent Authority hearing the Statutory Appeal filed by the Temrikar Family shall not be influenced by any observations made by this Court in this order and the said statutory Appeal shall be decided on its own merits.

11. Civil Revision Application stands allowed in the above directions and is disposed.

H. H. SAWANT

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[MILIND N. JADHAV, J.]