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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9075 OF 2024

Mr. Mohammed Salim Hajisattar
Dayatar and ors

.....Petitioners

Vs.

Mrs. Bela Avinash Mehta

.....Respondent

Mr. Sujit Mashal i/b Huzeta Nasikwala for the petitioners
Mr. Amardev J. Uniyal a/w Mr. Anand S. Oka a/w B. L. Mangale for
respondent

CORAM : GAURI GODSE, J.

DATE : 18th JUNE 2025

ORDER:

1. This petition is filed by the defendants in a suit filed by the respondents under Section 6 of The Specific Relief Act, 1963 ('the said Act'). The impugned order rejected the petitioners' application under Section 10 of the Code of Civil Procedure, 1908, to stay the suit.

2. Learned counsel for the petitioners submits that the petitioners had filed a declaratory suit in the Small Causes Court

on 30th March 2016 for a declaration of their tenancy rights and protection of possession. He submits that pending the suit, by way of interim relief, possession was protected. He submits that interim relief was granted by holding that the petitioners are in possession of the suit property. Learned counsel for the petitioners further submits that respondents have filed the suit under Section 6 of the said Act on 14th September 2016. He refers to the issues framed in both the suits and submits that similar issues arise in both the suits, and if contrary findings are recorded in both the suits, serious prejudice would be caused to the petitioners. Learned counsel for the petitioners tendered a copy of the order dated 28th June 2018, passed by the Appellate Bench of the Small Causes Court, to support his submissions that the petitioners were found in possession of the suit property.

3. Learned counsel for the respondents submits that the order dated 28th June 2018 was challenged by the respondents in this Court, and the petition was disposed of by issuing directions that both suits be decided expeditiously within a period of two years from the date of the order. He further submits that based on the

directions issued by this Court and on the ground that the scope of both the suits is different, the learned Judge of the City Civil Court has rightly rejected the application under Section 10 of the CPC.

4. I have perused the papers of the petition. The declaratory suit by the petitioners was filed on 30th March 2016. The issues are framed in both suits. Though the issues regarding possession and the petitioners' tenancy rights are framed in both the suits, the scope of Section 6 of the said Act and the scope of the declaratory suit are completely different. The issues to be decided in the suit under Section 6 before the civil court are based on prior possession, irrespective of the title to the suit property. So far as declaratory suit is concerned, it is a substantive suit before the rent court, having exclusive jurisdiction to decide the declaration of tenancy rights. Hence, the findings that would be recorded in the suit under Section 6 would be restricted to the scope of the suit as contemplated under Section 6 of the said Act.

5. Even otherwise, this Court vide order dated 19th January 2024 has already directed that both the suits be decided expeditiously within two years. When this court passed the said

order, the application for stay under Section 10 was already pending before the City Civil Court. The order dated 19th January 2024, passed by this Court, was after hearing the present petitioners. The learned Judge of the City Civil Court has thus rightly referred to the different scope of both the suits and the order passed by this Court expediting both the suits. Considering the different scopes of both suits, it cannot be said that the issues are directly and substantially the same in both suits. Hence, I do not see any reason to interfere with the observations made by the learned Judge in rejecting the application under Section 10 of CPC.

6. The petition is devoid of any merit. For the reasons recorded above, the petition is dismissed.

[GAURI GODSE, J.]

IRESH
MASHAL

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