

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11677 OF 2025

Mr. Nikhilesh Keshrichand Jhaveri

and Ors

.....PETITIONERS

: VERSUS :

Johnson Dye Works (P) Ltd.

and Ors.

.....RESPONDENTS

Mr. Simil Purohit, Senior Advocate with Mr. Vishal Narichania & Ms. Sushma Singh, for Petitioners.

Mr. M.M. Vashi, Senior Advocate with Ms. Panthi Desai i/b M.P. Vashi & Associates, for Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved On: 02 April 2026.

Pronounced On: 16 April 2026.

JUDGMENT:

1) By this petition, Petitioners challenge order dated 4 August 2025 passed by the learned Judge, Small Causes Court rejecting the application at Exhibit-265 filed in R.A.E. Suit No. 965/1427 of 2010. By that application filed, the Petitioner/Defendant Nos. 6 to 8 sought stay of

further trial in the suit till the judgment and decree dated 29 April 2025 passed in T.E. Suit No.185 of 2018 remains binding on the parties. Petitioners also sought framing of additional issues concerning maintainability of the suit in the light of Plaintiff's pleadings in T.E. Suit No. 185 of 2018.

2) Considering the narrow issue involved in the petition and the chequered history of litigation between the parties, it is not necessary to narrate the detailed facts of the case. By Indenture of Lease dated 23 December 1938, lease in respect of the land bearing final Plot No.268, TPS-III, Mahim, Mumbai-400 016 with the building standing thereon situated at 16 Mogul Lane, Matunga (W) (**suit property**) was granted in favour of Ratanchand and Tarachand Jhaveri, who were the predecessor in interest of the Petitioners and Respondent Nos.2 to 12. Jhaveris inducted New Era Textiles Pvt. Ltd. as their lessee in the suit property, which claims to have sold its machinery to its successor in interest, M/s. New Era Fabrics Ltd. (**New Era**). Jhaveris filed Suit No. 236 of 1968 against New Era alleging illegal occupancy. By Consent Terms executed in the year 1977 between the heirs of Jhaveris and New Era Fabrics Ltd. (**New Era**), monthly tenancy was created in favour of New Era. By Agreements dated 21 March 2000 and 6 January 2009, New Era created tenancy/Leave & License with the Plaintiff-M/s. Johnson Dye Works Private Limited (**Johnson Dye Works**) and handed over possession of the suit property. Jhaveris terminated tenancy of New Era in February 2009 and filed T.E. & R. Suit No. 48/62 of 2009 against New Era, Plaintiff and others seeking their eviction from the suit property. By order dated 26 March 2014, the Trial Court found paid up share capital of New Era to be in excess of Rs.1

crores and the said finding was confirmed upto the Hon'ble Supreme Court. This is how New Era lost protection from rent escalation and eviction.

3) In the meantime, a Conveyance Deed dated 11 October 2009 was executed by the original owners in favour of the Plaintiff conveying the suit property. This is how plaintiff, who was merely a licensee of New Era, became the owner of the suit property and acquired rights higher than that of Jhaveris who were lessees of the suit property. After purchase of the suit property, Plaintiff terminated tenancy of Jhaveris vide notices dated 18 November 2009 and 7 July 2010.

4) In the above backdrop, Plaintiff- Johnson Dye Works filed R.A.E. Suit No. 965/1427 of 2010 seeking eviction of Defendant herein. The suit was filed under Section 33 of the Maharashtra Rent Control Act, 1999 (**MRC Act**). Plaintiff also filed T.E. Suit No.12/15 of 2014 under the provisions of Section 41 of the Presidency Small Causes Courts Act, 1882 (**PSCC Act**) read with Transfer of Property Act, 1882 (**TOPA**). Plaintiff also filed third suit bearing T. E. Suit No. 185 of 2018 under Section 41 of the PSCC Act read with TOPA.

5) Plaintiff's third suit, being T.E.Suit No. 185 of 2018, came to be decided first and the same was decreed vide judgment and order dated 29 April 2025 directing eviction of the Defendants therein. Petitioners have filed Appeal against the decree dated 29 April 2025, which is pending.

6) After the decree in T.E. Suit No.185 of 2018 on 29 April 2025, Petitioners, who are original Defendant Nos.6 to 8, filed application at Exhibit-265 in R.A.E. Suit No. 965/1427 of 2010 seeking stay of the said suit and also for framing of additional issues concerning maintainability of the Suit. The application was resisted by the Plaintiff by filing reply. By order dated 4 August 2025, the Trial Court has proceeded to reject Petitioner's application at Exhibit-265. Order dated 4 August 2025 is the subject matter of challenge in the present petition.

7) I have heard Mr. Purohit, the learned Senior Advocate appearing for the Petitioners. He submits that the cause of action for filing the present suit (R.A.E. Suit No. 965/1427 of 2010) is same as the one for filing T.E. Suit No. 185 of 2018. That therefore Plaintiff cannot be permitted to prosecute the first suit of 2010 in the light of having secured a decree in the third suit of 2018. He submits that provisions of Section 10 of the Code of Civil Procedure, 1908 **(Code)** are aimed at Courts trying and deciding two different suits based on same cause of action. That the provision is aimed at preventing Court from passing conflicting decrees. That the Court deciding third suit of 2018 has held that the Jhaveri's are not entitled to protection under the rent control legislation. As against this, the first suit of 2010 is premised on assertion that Jhaveri's are protected tenants in respect of the suit property. That therefore permitting decision of first suit of 2010 is likely to result in conflicting decrees over same issues in the two suits filed on the basis of same cause of action.

8) Mr. Purohit further submits that though Section 10 of the Code provides for stay of the subsequent suit, the provision can also be applied for stay of previous suit. He relies on judgment of the Apex Court in **Manohar Lal Chopra Versus. Rai Bahadur Rao Raja Seth Hiralal**¹ in support of this contention that even a previously filed suit can also be stayed in given circumstances. He submits that filing of 2 suits for same cause of action of eviction of Jhaveri's is vexatious in nature and that therefore provisions of Section 10 of the Code needs to be applied in the present case for staying the previous suit of 2010.

9) Mr. Purohit further submits that passing of decree dated 29 April 2025 in the third suit of 2018 has changed the entire complexion. He submits that even if it is assumed arguendo that there was no prohibition for prosecuting both the suits simultaneously, once the third suit of 2018 is decreed by giving a declaration that the provisions of MRC Act do not apply to the suit property, Plaintiff's cannot be permitted to prosecute first suit of 2010 which is premised on an express assertion that provisions of MRC Act do apply to the suit property. That the nature of inquiry in the two suits is identical and that therefore evidence led in both the suits is also same. That parties therefore cannot be required to lead evidence unnecessarily in the first suit of 2010 when Plaintiff has already secured eviction decree in the third suit. That no prejudice would be caused to the Plaintiff if the first suit of 2010 is stayed since Plaintiff is not only armed with eviction decree in the third suit of 2018 but is already in possession of the suit premises. That in the event of the Appellate Court setting aside decree dated 29 April 2025, Plaintiff would be free to

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prosecute the first suit of 2010. On above broad submissions, Mr. Purohit presses for setting aside the impugned order.

10) Mr. Vashi, the learned Senior Advocate appears for Respondent No.1-Plaintiff and opposes the petition submitting that Petitioners never objected to trial of first suit of 2010 during pendency of the third suit of 2018. That from 2018 till 2025, the Petitioners did not have objection about 2 suits being prosecuted simultaneously. That since no request was made for stay of either of the suit from 2018 to 2025, there is express admission that the nature of inquiry in the 2 suits is different. He submits that cause of action for filing the two suits are different. That parties in the two suits are also different. He further submits that the Supreme Court has expedited the first suit of 2010 and has repeatedly fixed timelines for deciding the said suit. He submits that by an order dated 7 June 2024, the Supreme Court has directed expeditious decision of the suit.

11) Mr. Vashi further submits that filing of application at Exhibit-265 by the Petitioners was not a bonafide exercise. That the Court has noted the conduct of the Petitioners in not raising any objection for 7 long years for trial of first suit of 2010. He therefore submits that Petitioners have been taking contradictory positions in the different suits. That in the third suit of 2018, Petitioners took a defence that they are protected tenants under the provisions of MRC Act. That though the defence is rejected, the appeal of the Petitioners is pending and in the event Appellate Court, this Court or Supreme Court holding that Jhaveris are protected tenants, Plaintiff is entitled to prosecute first suit of 2010

and secure a decree on an assumption that Jhaveri's are protected tenants. He therefore prays for dismissal of the petition.

12) Rival contentions raised on behalf of the parties now fall for my consideration.

13) Parties have filed multiple suits against each other for securing possession of the suit property which happened to be a plot of land situated at a prominent location in Mumbai city. The case also involves a unique circumstance where the original owners first created lease in respect of the Jhaveris on 23 December 1938. Jhaveris apparently created monthly tenancy in favour of New Era by filing consent terms in a pending suit in the year 1977. New Era, in turn, inducted Plaintiff as a licensee in the suit property. Jhaveris therefore filed T.E.& R Suit No.48/62 of 2009 against New Era, Plaintiff- Johnson Dye Works and others seeking recovery of possession of the suit property. After filing of the said suit by Jhaveris in March 2009, the inductee-Johnson Dye Works (Plaintiff) decided to purchase the entire suit property and accordingly Conveyance Deed dated 11 October 2009 was executed with the original owners. With the result, Johnson Dye Works changed its role from a mere inductee/licensee of New Era to that of owner of the suit property. Thus, while Jhaveris filed T.E.& R. Suit No. 48/62 of 2009 for ejectment of New Era and Johnson Dye Works for violation of terms of tenancy by induction of Johnson Dye Works, during pendency of that suit, the inductee-Johnson Dye Works acquired ownership in respect of the suit property. Conveyance deed dated 11 October 2009 thus put Johnson Dye Works into the position of owner and Jhaveris into the position of its lessees. After

establishment of relationship of lessor and lessee between Johnson Dye Works and Jhaveris, the first suit of 2010 (R.A.E. Suit No. 965/1427 of 2010) was filed by Johnson Dye Works against Jhaveris seeking their ejectment. That suit has been filed under an assumption that the Jhaveris are protected tenants in respect of the suit property and accordingly the suit is instituted under Section 33 of the MRC Act.

14) During pendency of first suit of 2010, an important development occurred in the suit filed by Jhaveri's against New Era (T.E. & R. Suit No. 48/62 of 2009) in which order dated 26 March 2014 was passed by the Trial Court, which was confirmed upto the Apex Court holding that New Era's paid-up share capital was more than Rs.1 crores and that therefore it was not entitled to protection of MRC Act. The order dated 26 March 2014, which was helpful to Jhaveris for seeking ouster of New Era, the same became a hurdle in their way in the third suit of 2018 filed by Plaintiff-Johnson Dye Works. After realising that provisions of MRC Act do not apply to the suit property, Plaintiff sniffed at opportunity for seeing quicker ejectment of Jhaveris and accordingly filed third suit of 2018 (T.E. Suit No. 185 of 2018) under the provisions of Section 41 of the PSCC Act read with provisions of TOPA. Thus, from the year 2018 onwards, Plaintiff- Johnson Dye Works started simultaneously prosecuting the two suits for seeking eviction of Jhaveris. (It is not necessary to make a detailed reference to one more suit of 2014 for avoiding confusion). Plaintiff-Johnson Dye Works sought eviction of Jhaveris in first suit of 2010 on an assumption that they might be treated as protected tenants under the MRC Act. Simultaneously, they also

started prosecuting the third suit of 2018 which proceeded on an assumption that Jhaveris are not protected tenants under the MRC Act.

15) In law, it is permissible for the owner to simultaneously prosecute two actions for eviction of lessees/tenants by treating the lessees/tenants as protected and unprotected tenants under the rent control legislation. This is particularly because of the long time involved in attaining finality to the proceedings initiated by the lessor/landlord. Considering the hierarchical levels of Small Causes Court, Appellate Bench, High Court and the Supreme Court, it often takes decades for finalisation of eviction proceedings. Thus, if landlord files a suit for eviction against a tenant who has lost protection of MRC Act and it is ultimately held that the tenant is entitled to rent control protection, the landlord will have to start the eviction action all over again by filing a suit under Section 33 of the MRC Act. To prevent this, Courts have recognised the principle of simultaneous prosecution of two proceedings for seeking ejection of the tenant/lessee by treating him as a protected tenant and also as unprotected tenant. In **Funds and Properties of Parsi Punchayet and others Versus. Minoo Keki Mistry and others**², this Court had similar issue to decide. The defendants therein had raised the contention that the pleas under Section 41 of PSCC Act and under Section 16 of the MRC Act are mutually destructive and that therefore both the pleas could not be raised in a single suit. In case before this Court, the suit was filed under Section 41 of the PSCC Act on the footing that the suit premises were not covered by the provisions of MRC Act. However, the Defendants filed written statement claiming status of protected tenants. Therefore,

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Plaintiffs amended the suit by raising an alternate plea for eviction of defendants if they were treated as protected tenants. This Court took note of several judgments of the Apex Court and of this Court and held in paras-24 and 28 as under:

24. In my view therefore, incorporation of both the inconsistent and alternative pleas of Defendants not being protected tenants and they being protected tenants must be permitted to be raised in the same suit as the same does not cause any prejudice to the Defendants and more importantly avoids multiplicity of proceedings. As observed above, if the amendment is not permitted and in the event the Court holds the Defendants to be protected tenants, Plaintiffs will have to file a separate suit and wait for considerable period of time to have their right of ejection determined by the Court. On the other hand, if the alternative pleas are permitted to be raised and canvassed in the same suit, the Small Causes Court would first conduct an enquiry as to whether Defendants are protected tenants or not. In the event it holds that what was leased was mere open piece of land and that Defendants are not protected tenants, the Court can proceed to decree the suit under section 41 of the PSCC Act. In the event the Small Causes Court answers the above issues in the negative by holding that the Defendants are protected tenants, it can immediately proceed to decide the grounds of unlawful sub-letting, additions and alterations, non-user and bonafide requirement raised by the Plaintiffs. Thus far from causing any prejudice to the Defendants, the amendment would obviate unnecessary filing of another round of litigation. In my view therefore, the amendment sought to be incorporated by the Plaintiffs was rightly allowed and the Appellate Bench has erred in reversing the decision of the Trial Court.

28. In my view, the doctrine of election would have no application to the present case as the doctrine of election applies essentially to a case where mutually exclusive courses are available to a person and, if by his conduct, he makes the other person to believe that he is pursuing one of the two courses leaving aside the other. The result of such act is that he induced the other person to alter his course of action and subsequently he cannot be permitted to alter his own stand by resorting to other course which he intentionally decided not to follow. In the present case, Plaintiffs' course of action of treating the suit property as open piece of land and treating Defendants as not protected tenants has not resulted in Defendants believing Plaintiffs' act as abandonment of right of ejection under section 16 of the MRC Act. Therefore, doctrine of election has no application in the present case. In fact the principle of estoppel by invoking doctrine of election is not applicable in the present

case as Plaintiffs are otherwise free to institute a fresh suit under section 16 of the MRC Act in the event of their suit under section 41 of the PSCC Act being dismissed for want of jurisdiction or as being not maintainable. In my view therefore, neither doctrine of election nor judgment of Calcutta High Court in Hiralal Alias Hiranand have any application to the present case.

16) The only difference in the present case is that instead of raising the inconsistent pleas of defendants being protected tenants and unprotected tenants in the same suit, two distinct suits are filed by the Plaintiff seeking eviction of Jhaveris. The first suit of 2010 is premised on an assumption that Jhaveris are protected tenants, whereas third suit of 2018 is premised on an assertion that they do not enjoy protection under the MRC Act.

17) Petitioners-Defendant Nos.6 to 8 who are now strenuously seeking stay of first suit of 2010, never objected to simultaneous prosecution of both the suits. Since they were confident of securing declaration in the third suit of 2018 that they are protected tenants, they never objected to Plaintiff prosecuting the first suit of 2010. Infact decision of first suit of 2010 at an earlier point of time would have enured to their benefit since the decree passed therein would have been used by the Petitioners for defeating the third suit of 2018. This appears to be the reason why Petitioners never objected to simultaneous prosecution of the first suit of 2010. To their bad luck, the Small Causes Court decided third suit of 2018 at an earlier point of time by holding that Jhaveris are not protected tenants in respect of the suit property. It is only after passing of eviction decree dated 29 April 2025 that the Petitioners were advised to file application at Exhibit-265 on 6 May 2025 seeking following prayers:

The Applicants - Defendant Nos.6 to 8 pray:

(a) That this Hon'ble Court be pleased to stay further Trial in the above Eviction Suit until such time as the Order, Decree & Judgment passed on 29.04.2025 in T.E. Suit No. 185 of 2018 remains binding upon the parties.

(b) That this Hon'ble Court be pleased to frame the additional issue "Whether the present Eviction Suit is maintainable in light of the Plaintiff's pleadings in the TE. Suit No. 185 of 2018 that MRCA did not apply to the Suit Property."

(c) Such other and further reliefs as nature and circumstances of case may require;

18) The Trial court has rejected the application at Exhibit-265 by recording *inter-alia* following reasons:

15. In the present case, it is an admitted position that the present suit for eviction has been instituted earlier under the provisions of the MRC Act, whereas, the subsequently instituted T.E. Suit No. 185 of 2018, filed under the PSCC Act was decreed in favour of the plaintiff on 29th April 2025. It is also evident that the causes of action in both suits, though arising from the same lease deed and alleged breaches, are not entirely identical in law or relief sought, given the different legal frameworks under which each has been filed. More importantly, it is significant that during the pendency of the said T.E. Suit for nearly seven years, the defendants never approached that Court seeking a stay of that later proceeding on the ground of pendency of the present, earlier-instituted suit. It is only after the decree in the subsequent suit that the present application has been moved, which casts serious doubt on the bona fides of the defendants. The timing and conduct suggest that the application is a belated and strategic attempt to obstruct further adjudication of the present suit, rather than a genuine invocation of judicial economy or protection from multiplicity.

16. Furthermore, as laid down in the rulings cited above, particularly *Jaihind Iron Mart* and *Prakash Chand Soni*, the inherent powers under Section 151 of the CPC may only be invoked to stay an earlier suit if continuance of such proceedings amounts to an abuse of the process of the Court or is shown to be vexatious, mala fide, or oppressive. In the present case, neither in the application nor in the rejoinder have the defendants even alleged, much less substantiated, that the present suit is vexatious or has been instituted with mala fide intent. Rather, the pleadings reveal that the defendants themselves have taken the position

that the MRC Act is applicable to the subsequent T.E. Suit. If that be so, the pendency and continuation of the present suit cannot be branded as oppressive or abusive. On the contrary, it suggests that both suits are founded on distinct statutory schemes and are prima facie maintainable on their own footing. The reliance placed by the defendants on The Laxmi Bank Ltd., Ambalal Sarabhai Enterprises, and R.E. Fanibunda is distinguishable on facts and does not assist their cause, particularly when no overlapping jurisdictional prejudice or res judicata is demonstrated at this stage.

17. Since I have found that the present application is not maintainable on the preliminary ground that a stay of an earlier-instituted suit at the instance of a subsequently decreed suit is impermissible, I am not inclined to enter upon or adjudicate other aspects canvassed by the defendants, such as whether the issues are directly and substantially the same, whether the parties are identical, whether the cause of action is common, or whether future res judicata may arise. These questions are left open for appropriate determination, if and when they properly arise. Accordingly, the prayer for staying this suit is devoid of merits and deserves to be rejected.

19) I am in broad agreement with the reasons recorded by the Trial Court for rejecting Petitioner's application at Exhibit-265. Section 10 of the Code provides for stay of only the subsequent suit. Provisions of Section 10 of the Code are as under :

10. Stay of suit.

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

20) The Petitioners never sought stay of third suit of 2018 and thereby impliedly admitted the position that the nature of inquiry in the

two suits, cause of action for filing the two suits and the nature of relief sought therein are different. Now Petitioners have turned around and have contended that the cause of action, issues and evidence in the two suits is same. Now they have sought stay of earlier suit. Faced with the difficulty that Section 10 of the Code provides for stay of subsequent suit, reliance is placed on judgment of the Apex Court in ***Manohar Lal Chopra*** (supra). In case before the Apex Court the partnership was entered at Indore for operation of coal mines. The Partnership Deed provided for jurisdiction of Courts at Indore. However, the Appellant therein instituted a Suit at Asansol. The Respondent filed application under the Arbitration and Conciliation Act, 1940 for stay of the suit in view of arbitration agreement in the Deed of Partnership. Additionally, the Respondent therein also filed his own suit in the Court of District Judge, Indore. The Respondent thereafter applied for stay of the suit filed at Asansol in exercise of inherent powers under Section 151 of the Code. This is how stay of earlier suit was sought on the ground that parties had agreed for jurisdiction of Courts at Indore. Conversely, appellant applied to Indore Court for stay of the suit under Section 10 and 151 of the Code. Thereafter, the Respondent applied under Section 151 of the Code to Indore Court seeking order of restraint against the appellant from continuing the proceedings in suit filed by him in the Court at Asansol. The Indore Court granted injunction in favour of the Respondent. High Court dismissed the Appeal of the Appellant, and this is how the matter reached the Apex Court. Two issues were raised before the Apex Court, which are captured in para-15 of the judgment as under:

15. On behalf of the appellant, two main questions have been raised for consideration. The first is that the Court could not exercise its inherent powers when there were specific provisions in the Code of Civil Procedure for the issue of interim injunctions, they being Section 94 and Order 39. The other question is whether the Court, in the exercise of its inherent jurisdiction, exercised its discretion properly, keeping in mind the facts of the case. The third point which came up for discussion at the hearing related to the legal effect of the second proviso in the deed of dissolution on the maintainability of the suit in the Court at Asansol.

21) Answering the first issue, the Apex Court held that if the earlier suit is found to be vexatious, the Court can use powers under Section 151 to restrain the Plaintiff of the earlier suit from prosecuting the earlier suit by granting injunction. The Apex Court has further held that even powers under Section 10 of the Code could be used for stay of the previous suit which was found to be vexatious and filed in violation of terms of contract. The Apex Court held in para-39 of the judgment as under :

39. The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified. The provisions of Section 10 do not become inapplicable on a Court holding that the previously instituted suit is a vexatious suit or has been instituted in violation of the terms of the contract. It does not appear correct to say, as has been said in *Ram Bahadur v. Devidayal Ltd.* 17 that the legislature did not contemplate the provisions of Section 10 to apply when the previously instituted suit be held to be instituted in those circumstances. The provisions of Section 35-A indicate that the legislature was aware of false or vexatious claims or defences being made, in suits, and accordingly provided for compensatory costs. The legislature could have therefore provided for the non-application of the provisions of Section 10 in those circumstances, but it did not. Further, Section 22 of the Code provides for the transfer of a suit to another court when a suit which could be instituted in any one of two or more courts is

instituted in one of such courts. In view of the provisions of this section, it was open to the respondent to apply for the transfer of the suit at

Asansol to the Indore Court and, if the suit had been transferred to the Indore Court, the two suits could have been tried together. It is clear, therefore, that the legislature had contemplated the contingency of two suits with respect to similar reliefs being instituted and of the institution of a suit in one Court when it could also be instituted in another Court and it be preferable, for certain reasons, that the suit be tried in that other Court.

22) In my view however, the judgment in ***Manohar Lal Chopra*** would have no application to the facts of the present case. The issue before the Apex Court was about correctness of an order of injunction granted by the Court at Indore restraining the Plaintiff in suit filed in Asansol from prosecuting that suit. The suit filed in Asansol was against specific contractual agreement between the parties, which provided for jurisdiction of Courts at Indore only. Very often, parties to contract deliberately file suit at a Court not agreed under the contract with malafide intention of seeking stay of subsequently filed suit at the correct place agreed under the contract. In such situation, the ratio of the judgment in ***Manohar Lal Chopra*** can be applied where even previously filed suit can be stayed if it is found that previously filed suit is vexatious in nature and against the contractual agreement between the parties. The ratio of the judgment in ***Manohar Lal Chopra*** cannot be cited in support of an abstract proposition that in every case, it is lawful for the Court to stay previously filed suit by having recourse to the provisions of Section 10 of the Code. In the present case, it is difficult to hold that the first suit of 2010 is vexatious and therefore the ratio of the judgment otherwise does not apply to the present case.

23) In the present case, the Supreme Court has time and again expedited decision of R.A.E. Suit No. 965/1427 of 2010. Reference in this regard can be made to the order dated 7 June 2024 which reads thus:

1. Heard learned counsel for the respective parties.
2. We do not find good ground to interfere in the impugned order. Accordingly, the Special Leave Petition is dismissed.
3. The Suit, i.e, RAE Suit No.965/1427 of 2010, which is pending before the Court of Small Causes is requested to be expedited.
4. It is needless to state that both parties to cooperate with the Court for expeditious disposal.
5. Pending application(s), if any, shall stand disposed of.

24) Petitioners never objected to expeditious disposal of R.A.E. Suit No. 965/1427 of 2010. This was because expeditious disposal of the first suit of 2010 was possibly in the interest of the Petitioners. Now they have taken a *volte face* and want stay of the first suit of 2010. The Trial Court has rightly branded such an action of the Petitioners as a strategic attempt to obstruct further adjudication of the suit rather than a genuine invocation of judicial remedy. It would otherwise be imprudent for Small Causes Court or this Court to stay proceedings of suit, hearing of which is expedited by the Apex Court.

25) I am also in agreement with the findings of the Trial Court that the two suits are founded on distinct statutory schemes and are *prima-facie* maintainable on their own footings. The first suit of 2010 is filed for eviction of Defendants therein on the grounds of commission of breach of tenancy under Section 16 of the MRC Act. Thus, in the first suit

of 2010, Plaintiff will have to make out one of the enumerated grounds under Section 16 of the MRC Act for seeking eviction of the Defendants therein. On the other hand, the third suit of 2018 is a simple ejectment suit under Section 41 of the PSCC Act based on a premise that the Defendants therein are not entitled for eviction protection under the MRC Act. Upon proving that the lease is validly terminated as per the provisions of TOPA, Plaintiff sought eviction in the third suit of 2018. Thus, nature of inquiry in the two suits is altogether different. The parties to the suit are also different as New Era, who is Defendant No.12 in T.E. Suit No. 185 of 2018, does not appear to be a party in R.A.E. Suit No. 965/1427 of 2010.

26) So far as framing of additional issue of maintainability of the suit is concerned, the said prayer is rejected by the Court at this juncture by recording following reasons:

18. In so far as the defendants' conjoint prayer for framing of an additional issue is concerned, I find such joinder with the substantive prayer for stay rather unusual and procedurally misplaced. Nevertheless, the said prayer is not rejected at this stage. As the proposed issue pertains purely to a question of law concerning maintainability, the Court is empowered under Order XIV Rule 5 of the CPC, to frame additional issues at any stage of the proceedings, including after the conclusion of evidence. Therefore, the said prayer shall be considered, if necessary, after the evidence of both parties is concluded. In the result, the application deserves to be rejected.

Thus the Court would exercise powers under Order XIV Rule 5 of the Code for framing additional issues if considered necessary at the appropriate stage. The issue is thus left open by the Court.

27) Considering the above position, no case is made out for interference in the impugned order. Filing of application at Exhibit-265 by the Petitioners was gross abuse of process of law. The Application has been rightly rejected. The Writ Petition is devoid of merits. It is accordingly dismissed without any order as to costs.

[SANDEEP V. MARNE, J.]