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IN THE COURT OF DISTRICT JUDGE- 9 NAGPUR
(Presided over by Smt. T.G. Mitkari)

Civil Revision No.1/2018

Exh. No.13

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APPLICANT:-

Mayank s/o Shyamprakash Tiwari,
Aged about 34 years, Occupation:Business,
R/o "Ravidurg", Ramdeobaba Tekadi,
Katol Road, Gittikhadan,
Nagpur

VERSUS

NON-APPLICANTS:-

Reeta w/o Vinay Mohabey
Aged about 62 years, Occ; Business,
R/o 201, B.B. tower, 58/B, Shankar Nagar,
Nagpur

**REVISION UNDER SECTION 34 (4) OF MAHARASHTRA RENT
CONTROL ACT R/W 151 OF CIVIL PROCEDURE CODE**

Appearances:

Shri R.M. Tahliyani, Adv. for Applicant.

Shri Aditya P. Paliwal, Adv. for Non-applicants.

J U D G M E N T

(Delivered on this 3rd March, 2018)

1) This is revision application challenging the order dated 07-12-2017 passed in Reg. Civil Suit No.258/2013 by Addl. Small Cause Court, Nagpur. The applicant is original defendant and non

applicant is original plaintiff.

2) The brief facts of the case of applicant is that,

A civil Suit bearing RCS No.258/2013 was filed on 9-7-2013 by non applicant against the applicant u/s 15 of the Maharashtra Rent control Act, 1999 (hereinafter referred as 'the Act') for recovery of possession and for recovery of arrears of rent and other charges.

The original plaintiff/non applicant had filed Civil suit bearing No.145/2012 on 9-4-2012 against present applicant u/s 16(1)(g) under the Act for eviction on the ground of bona fide need.

The learned Small Causes Court was pleased to reject an application u/s 10 of C.P.C. filed by applicant/original defendant of prayer of staying the suit bearing RCS No.258/2013 vide order dated 7-12-2017, which is assailed in the present revision on the ground that it is against natural justice without appreciating the facts of the case, documents, case laws and without judicious reasoning, which is perverse and arbitrary, needs to be set aside to avoid the multiplicity of litigation.

3) The non applicant filed reply to the Revision Application and submitted that the order of trial court is just and proper. The scope of suit filed u/s 15 and u/s 16 of the Act and its nature of inquiry are different. There is no identity of the matter and it is filed to protract litigation. To support his contention non-applicant relied

on citation reported in 2005 SCC 242, in case of National Institute .Vs. C. Parmeshwar.

4) Heard learned advocates for applicant and non-applicant.

5) On the basis of rival submissions and the documents filed on record the following points arisen for my determination, I have recorded my findings thereon for the reasons stated:-

Sr. No.	Points	Findings
1.	Whether the revision is maintainable?	...In the Negative
2.	Whether the impugned order needs to be interfered with?	...In the Negative
3.	What order?	...As per final order.

REASONS

6) **As to Point Nos.1 & 2:-**

The non-applicant/plaintiff has raised the issue of maintainability of the present Revision Application. Both parties have relied on the ratio laid down by the Hon'ble High Court in landmark judgment of **Bhartiben Shah Vs. Gracy Thomas in 2013(2) Mh.L.J. 25**, wherein it is held that,

“Revision application under Section 34 (4) of the Act, While an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent, nevertheless, the order sought to be revised must directly affect the substantive rights and

liabilities of parties under the Maharashtra Rent Control Act or any other substantive law, but not merely rights under a procedural law like the Code of Civil Procedure or the Evidence Act. For an order to be revisable under Section 34 (4) of the Maharashtra Rent Control Act, the order must affect the very existence of the suit or the foundation of the party's case in their pleadings and not merely a procedural order, not affecting the substantive rights of parties, though such procedural order may ultimately affect the strength or weakness of the case of the aggrieved litigant which is to be finally determined at the trial while passing the decree in the suit or final order in the proceeding.”

7) The learned advocate for applicant submitted that two suits filed for eviction between same parties which are adjudicated before two different Small Causes Courts, even if the grounds of Sec.15 & 16 (1)(g) of the Act are different, Sec.10 will be applicable and he has relied on the case reported in **AIR 1979 Delhi 118, Sagar Shamsher Jung Bahadur Rana V. The Union of India**, wherein the Hon'ble High Court has dealt with the term “matter in issue” and observed that it do not mean entire subject matter in issue in two suits. Further that in recovery of rent a landlord can never file two suits claiming rent of the same period and claiming the same amount of rent. In this view it was held that the litigation pending at the stage of appeal between the parties would operate as res judicata in the subsequent suit and it can be disposed of in terms of the findings that may be given in appeal.

In the present case in hand, only one suit is filed for recovery of rent and other suit is filed for ejectment u/s 16(1)(g) of the Act.

8) He also relied on the case reported in **AIR 1984 Orissa, 209, Dr. Gurupasad Vs. Bijoykumar Das**, wherein it is held that *“Sec.10 merely lays down a procedure and does not vest any substantive right in the parties. The object of the said section is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjoining upon two parallel litigation in respect of the same cause of action, same subject matter and same relief. The policy of law is to be obviate the possibility of two contradictory verdicts by the same courts in respect of the same relief”*.

In the case cited supra, the case of plaintiff in earlier suit was substantially his defence in later suit and the case of plaintiff in later suit was his defence in earlier suit and in this background, it was held that, the court had inherent power to consolidate two suits and to direct analogous hearing of the same in ends of justice.

9) In the present case in hand, two suits filed by plaintiff before Small Causes Courts are pending, the present applicant is original defendant in these suits. The observations of Hon'ble High court in the cited case supra that Sec.10 merely lays down a procedure and does not vest any substantial rights in the parties do not support the argument advanced by learned advocate for applicant.

10) The Ld. Adv. for applicant also relied on the case reported in **AIR 1948 Allahabad, 387, Anandan Gupta vs. Navin Agrawal & others**. It is on the point of consolidation of cases and

Order 4-A relating to consolidation of suits by U.P. Act No.57 of 1976 which expressly empowers the trial court to consolidate the suit if he finds it expedient in the interest of justice to direct a joint trial and all such proceedings can be decided upon the evidence recorded in all or any such proceeding. In this case of Anandan Gupta, suit was filed by tenant against landlord for declaration and perpetual injunction rejecting landlord from ejecting him and the subsequent suit by landlord for ejectment and recovery of dues were consolidated but subsequent suit was not stayed pending earlier suit.

11) In the present case in hand, no such express rules for consolidation of suits are available in the Maharashtra Rent Control Act, 1999. But the remedy is expressly available u/s 15 for relief against forfeiture and u/s 16 for recovery of possession which has been rightly exhausted by original plaintiff/non-applicant. Hence, the observations in the given case, in my humble view, are not helpful to the applicant.

12) He further relied on the case of **Kunhisankara Ijamam vs. M. Venkappa Bhatta** reported in AIR 1954 Madras, 320, in which it is held that, "*when an appeal has been preferred from a decree in previous suit, the court should stay a subsequent suit*".

But in the present case, no question arises of pendency of appeal. The facts and circumstances of the case cited supra are different than the present case in hand.

13) The next case relied by the applicant is the case of **Arun General Industries Vs. Rishabh Manufacturers**, reported in **Air 1972, Calcutta, 128**. In this case, some defendants were added in subsequent suit and application for stay u/s 10 of CPC was moved, wherein it was held that, *"the addition of new party in a suit did not prevent the application of Sec.10 of CPC which requires that the same party should be litigating in the same suits because same party meant the parties between whom the matter substantially in issue had arisen and had to be decided. The complete identify of either of the subject matter or the parties was not required "*.

14) On the other hand, the learned advocate for non-applicant relied on **AIR 2005 Supreme Court 242, National Institute of Mental Health & Neuro Sciences Vs. Parameshwara**, wherein it is observed that-

“ The key words in Section 10 “directly and substantially in issue” are used in contra-distinction to the words “incidentally or collaterally in issue”. Therefore, section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical”.

15) The learned advocate for non-applicant has pointed out referring the certified copy of written statement filed in RCS No.145/2012 in Revision No.2/2018 between the same parties and relied by applicant and brought into attention of this court the pleadings in para no.3 of written statement and contended that the

relationship of landlord and tenant is admitted by original defendant. In the present case, the identity of the parties and subject matter of the suit is not disputed at all.

16) The nature of controversy in two different suits in which the matter substantially in issue had arisen and had to be decided are of different nature and the inquiry contemplated u/s 15 and u/s 16 is different. Hence, it has to be decided on different footings. Hence, the observations of the case Arun General Industries cited supra are not helpful to the applicant.

17) The next citation relied by applicant reported in **1966, Calcutta 382, Jugometal Vs. Rungta & sons**. In this case it was held that, “ *in the facts, if no case for stay of suit u/s 10 was made out, there should be stay u/s 151* ”. In this case both the suits were on the basis of contract entered into between the parties. A comparison of two complaints showed that paragraph 1 to 10 except para 5 of the complaint, in that suit were practically verbatim reproduction of the paragraph in the previously instituted suit which reached at the stage of appeal which was pending and no case for stay of the suit u/s10 of CPC has been made out. It was held that there should be a stay u/s 151 of Code. It is further held that, “*Section 151 recognizes that the court has very wide powers of regulating the procedure and conduct of litigation in cases where the evil complaint of or injury apprehended cannot be avoided by exercise of powers expressly conferred under the different provisions of the Court* ”.

No such case is made out for exercising the power u/s 151 of CPC in the present case.

18) The Hon'ble Apex Court in Bhartiben case cited supra in para 85 has held that under Sec.34(4) of Maharashtra Rent Control Act, the procedural orders which may ultimately affect the strength or weakness of the case of aggrieved litigant which is to be finally determined at the trial while passing the decree in the suit or final order in the proceeding cannot be subject of revision unless it affects the very existence of the suit or foundation of the parties case in their pleadings.

The unsuccessful party will have a right to raise a ground in the appeal filed against such judgment and decree.

19) On perusal of order passed by Small Causes Court dated 7-12-2017 reveals that, the case laws relied by defendant therein had been considered. In the light of above discussion and the ratios of cited cases supra, I do not found any illegality, perversity in the reasoning of the trial court that the suit filed u/s 15 and the suit pending in other case u/s 16(1)(g) of the Act, the points, modes or grounds available to the litigant in case of his claim or defence needs to be proved by the parties independently, there is no question of overlapping the order or consolidation of the suits.

20) Moreover, nothing is pointed out to refer the order assailed as a whole is equitted with errors of law or of facts

simplicitor which will constitute the order as not according to the law.

21) In this backdrop, as per the ratio laid down in Bhartiben's case supra and Dr. Guruprasad Mahanti's case, Sec.10 merely lays down a procedure and do not vest any substantial rights of the parties. The rejection of application filed u/s 16 of CPC by the learned trial court is procedural order which do not affect substantial rights of the parties and do not affect the rights of the parties under the Maharashtra Rent Control Act or under any substantial law. Hence, I hold that present revision application is not maintainable. In result, no interference is required in the impugned order. Accordingly, I answer point nos. 1 & 2 in negative. It is expedient to pass the following order.

ORDER

Civil revision application No.1/2018 stands dismissed with costs.

Dictated and pronounced in an open Court.

Nagpur.
Date:03-03-2018

(Smt. Trupti G. Mitkari)
District Judge-9,
Nagpur.

Certificate

I affirm that the contents of this P.D.F. file of Judgment are word to word, as per original Judgment.

Name of Stenographer : Mrs. M.R. Atrey