

Commissioner. Commissioner's report is also on the record with photographs. Today, the case is fixed for hearing of CMA No.14334/2016 U/O.XXXIX Rule 1 & 2 CPC and also for orders on Commissioner's report. Commissioner report is taken on record.

2. For order on CMA, I have observed from the pleadings as follows:-

i. The Plaintiffs have first filed Rent proceeding before the Rent Controller against Defendant No.1 for his eviction from the suit premises on the ground of illegal addition and alteration in the suit premises by showing the following cause of action in para-11 (page-83) of the eviction application.

The cause of action accrued in the month of **October 2016** when the Opponent, in violation of the law and **agreements in question**, started to tear down the Subject Properties and make substantive changes thereto, including structural changes, and also started to encroach upon and block the pavements in front of the shops in question, and as a result of continuing construction, despite the protests of the Applicant, such cause of action continues to date.

ii. The Plaintiffs then in his suit for declaration injunction and damages have shown the same cause of action in para-10 of the plaint against the same defendant who is tenant. It is reproduced below.

The cause of action accrued in the month of **October 2016** when the Defendant No.1 in violation of the law and **agreements in question**. Started to tear down the Subject Properties and make substantive changes thereto, including structural changes, and as a result of continued construction despite the protests of the Plaintiff, such cause of action continues to date.

iii. Once the cause of action accrued to the Plaintiff against defendant No.1, and it was taken by him to the Court of Rent Controller, the cause of action cease to continue for another court of law. The perusal of rent case reveals that the Plaintiff

have sought eviction of Defendant under Section 15(2)(iii)(c) and (iv) which reads as follows:-

15. Application to Controller.—(1).....

(2) The Controller shall, make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that—

- (i)
- (ii)
- (iii) the tenant has, without the written consent of the landlord—

- (a).....
- (b).....
- (c) infringed the conditions on which the premises was let out;

- (iv) the tenant has committed such acts as are likely to impair the material value or utility of the premises;

On filing of Rent Case the Plaintiff was estopped to raise the same “cause of action” against the same party before another forum under general law.

iv. The order dated 14.10.2016 obtained by the Plaintiff in the instant suit for inspection of the suit premises could have been obtained by them from the Court of Rent controller by making an application under **Section 20** of SRPO, 1979, which reads as follows:-

20. Power of civil Court. ---(1) Subject to this Ordinance, the Controller and the appellate authority shall, for the purpose of any case under this Ordinance, have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of only the matters, namely:-

- (a)
- (b)
- (c) inspecting the site; and
- (d)

v. The prayer clause 1 that the “*construction/alteration and/or changing in the subject properties be declared illegal and unlawful*” is subjudice before the Rent Controller and it has to

be decided by the Rent Controller on positive evidence if produced, by the Plaintiff to reach to the conclusion that defendant No.1 is liable to be evicted from the suit property.

vi. In the present suit this Court cannot even frame the issue of addition and alteration in the suit premises since the two different courts are not supposed to decide the same issue between the same parties at the same time. Once Defendant No.1 is accused of causing damage to the suit property by making unlawful addition and alteration before a Rent Controller and if Defendant is found guilty he would face penal consequence of his eviction therefore after the prosecution by Rent Controller to the same offence of causing damages addition and alteration in the suit premises, another court cannot penalize him in the name of damages, it amount to double jeopardy.

3. The Plaintiffs seem to have malafidely filed the instant suit against his tenant and obtained exparte orders may be with the view to create some evidence to be used in the court of Rent Controller. Whatever proceeding has taken place in the suit shall have no bearing on the rent proceeding and the Rent Controller should not be influenced by any orders and Commissioner report in this case and should decide the eviction application independently on its merits.

4. In view of the above facts and law, the plaintiffs have not been able to make out a prima-facie case for grant of injunction. The defendant No.1 has obtained the possession of premises under the tenancy agreement and he is paying rent regularly. The plaintiff has not complained for non-payment of rent even in his eviction

application (annexure E/1). The Commissioner's report does not suggest that any damage has been done to the suit premises by defendant No.1. To the contrary, the Commissioner's report suggest that the tiles were fixed on the walls of the shop to give a fresh look. False-ceiling in the suit premises cannot cause damage to the suit property and the electric wire in the False-ceiling or wooden frames lying inside the shop could not be treated as any structural change in the suit premises. The inspection report in fact has damaged the claim of the plaintiff. Restraining orders would cause inconvenience and irreparable loss to defendant No.1, as he would not be able to enjoys the benefits of running his business in the shop she has acquired under a legally binding tenancy agreement which are suit premises and irreparable loss would be caused not only in terms of business loss but also in terms of the rent which he has already paid to the plaintiff.

5. In view of the above facts and discussion this application is dismissed with cost of Rs.20,000/- to be deposited within 15 days with the Nazir of this Court in favour of High Court Bar Clinic.

6. Subject to payment of cost, Counsel for the plaintiff is to satisfy the Court that how this suit is maintainable.

JUDGE