

EJECTMENT SUIT NO. 115 OF 2008

ORDER NO. 60 DATED 06.04.2018

Both parties file hazira. The application under Or.7 R.11(d) read with Sec.151 C.P.C. is taken up for hearing.

By filing the instant application, defendant has prayed for rejection of the plaint on the ground, inter alia, that the Plaintiff has already filed one proceeding before the Rent Controller for fixation of fair rent and this suit cannot lie particularly when the Plaintiff's application before the Rent Controller is pending. Moreover, the notice served upon the defendant is illegal, invalid and void and cannot be regarded as a statutory notice under the law.

Other side/Plaintiff raises strong objection submitting, inter alia, that they have already withdrawn the fair rent proceeding before the Rent Controller. Save and except the present suit, no other proceedings are pending against the self same parties elsewhere.

Heard both sides. Perused the application, written objection and the materials available on record.

Admittedly, plaintiff initiated one proceeding before the Rent Controller for fixation of fair rent which, according to them, has already been withdrawn. Thus, at this juncture, no other proceeding, save and except the present suit, is pending between the parties.

The eviction notice has also been challenged by the defendant to be void and illegal. I am of the view that at this preliminary juncture, it is not at all conducive to pass/make any comments in respect of the validity of the notice which, according to me, ought to be taken up at the time of trial.

Let an issue be framed on the point of legality, validity and proper service of eviction notice upon the defendant to be decided at the time of final disposal of the suit.

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The instant application under Or.7 R.11(d) read with Sec.151 C.P.C. is thus rejected on contest without any order as to cost.

Fix 08.06.2018 for hearing of petition under Sec.7(2) of the W. B. P. T. Act.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]