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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 270 OF 2014

Shri Shashikant Kisan Tapkir ... Applicant

Vs.

Shri Shripati Pandurang Bhuwad and another ... Respondents

Ms.Lalita Panchakshari, Advocate for Applicant.

CORAM : R.G.KETKAR, J.

DATE : 08th DECEMBER, 2015

P.C. :

. Heard Ms.Lalita Panchakshari, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant has challenged the judgment and order dated 14/12/2013 passed by the learned 8th Joint Civil Judge, Junior Division, Pune below Exhibit 16 in Regular Civil Suit No. 882 of 2013. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to as defendant under Order 7 Rule 11(d) read with Section 9-A of C.P.C. The defendant contended that in view of provisions of the Maharashtra Government Premises (Eviction) Act, 1955 (for short 'Act') the Suit instituted by the respondents, hereinafter referred to as plaintiffs, is not maintainable in the Civil Court. In

particular, the contention that in view of Section 8-A of the Act, Civil Court has no jurisdiction to entertain and try the Suit is rejected.

3. Ms.Panchakshari submitted that the plaintiffs have instituted Suit for perpetual injunction restraining the defendant from i) carrying out any temporary or permanent construction in the suit property ii) obstructing plaintiff's user in the suit property and around the suit property. The plaintiffs have also claimed damages of Rs.20,000/- from the defendant. She submitted that the property in question was allotted to one Mr.Ranganath Deshpande. After expiry of Mr.Deshpande and his wife, their heirs and legal representatives have allotted the property in dispute to the defendant. She submitted that in view of Sections 4 and 8-A of the Act, Civil Court has no jurisdiction to entertain and try the Suit. In support of her submissions, she relied upon the decision of this Court in the case of *Merwanjee F. Desai Vs. State of Maharashtra*, **AIR 1988 Bombay 271**.

4. By the impugned order, the learned trial Judge rejected the application on the ground that the dispute is not between the government and occupant of the government land. The dispute also does not fall within the ambit of the Section 4 of the Act. In view thereof, bar under Section 8-A of the Act is not attracted. Perusal of prayers in the Suit, also shows that the plaintiffs have claimed perpetual injunction against the defendant. Section 4 of the Act

empowers the Competent Authority to evict a person on the grounds (a)(i)(ii)(iii), (b) & (c). In the present case, the dispute is essentially between private persons and not against the State Government. In view thereof, reliance placed by Ms.Panchakshari on the decision of this Court in the case of **Merwanjee F. Desai** (*supra*) does not advance the case of the defendant. The question that fell for consideration before the Division Bench was whether the State Government could file Appeal against the order of the Competent Authority. After considering the object and the scheme of the enactment, the Division Bench held that power conferred on the Competent Authority is executive power of the State Government, therefore, the action of the authority being on behalf of the government, no appeal is provided to the government against that order. The Division Bench, therefore, held that the State Government has no right to prefer an Appeal against the order of the Competent Authority.

5. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)