

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 8534 OF 2015

Mr. Zubin Noshirwan Kamdin. .. Petitioner
V/s.
Mr. Farrokh Noshirwan Kamdin & Ors. .. Respondents
...

Mr. Shardul Singh i/b. Mr. Vaibhav R. Gaikwad for Petitioner.
Mr. Rahul Mestry for respondents No. 1.

CORAM : M. S. SONAK, J.
DATE : SEPTEMBER 4, 2015.

P.C.:

1] This petition challenges order dated 16.07.2015, whereby the trial court, by reference to the pleadings has observed that the financial capacity of the plaintiff and the defendant is relevant for the purposes of deciding whether a person is tenant as define under Section 7 (15) (d) of the Maharashtra Rent Control Act, 1999 (Rent Act). This observation has been made at the stage of overruling the objection raised by the learned counsel for the defendant No. 3 in the course of cross -examination of defendant No. 3.

2] Although, prima-facie, it appears that the observation that financial capacity of the parties is a relevant factor for the purpose of determining whether a person is a tenant in terms of Section 7 (15) (d) of the Rent Act, is not appropriate, nevertheless, the observation made

by the Trial Court obviously seems to be a prima-facie one at the stage of deciding objection to the question posed to defendant no. 3 in the course of cross-examination. As such, at least at this stage, there is no reason to proceed on the basis that such observation will constitute some sort of an issue of estoppel at the stage of final hearing of the suit. That apart, it can hardly be said that the making of such observation is an error which touches the jurisdiction of the Court. At the highest, it may be an error within jurisdiction which is capable of being corrected in appeal, if occasion arises for the petitioner to institute an appeal. Accordingly, no case is made out to entertain the present petition, by which the petitioner invokes the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

3] It is however made clear that in case the matter is decided against the petitioner and the petitioner chooses to institute an appeal against the final decision, then the petitioner will be at liberty to impugn the orders/observations dated 16.07.2015 in such appeal by resort to the provision contend in Section 105 of the CPC.

4] It is further made clear that even the observation of this Court are only prima facie, and the same need not be taken into consideration at the stage of final disposal of the suit. The suit will have to be decided on its own merits and in accordance with law.

5] With liberty as aforesaid, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original Judgment/Order.