

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12042 OF 2015

WITH

WRIT PETITION NO.12044 OF 2015

Vithal Shetty ... Petitioner
Vs.
M/s. Motiram Tolaram and another ... Respondents

WITH

WRIT PETITION NO.12043 OF 2015

Mahendra Vadilal Bhanji and others ... Petitioners
Vs.
M/s. Motiram Tolaram and another ... Respondents

AND

WRIT PETITION NO.12045 OF 2015

Maniben Khimji Pethad and another ... Petitioners
Vs.
M/s. Motiram Tolaram and another ... Respondents

Mr. M. C. Hegde for Petitioners in all the Petitions.

Mr. Shardul Singh a/w. Mr. J. Fernandes i/b. D.S.K. Legal for Respondent
No.1 in all the Petitions.

CORAM : R. G. KETKAR, J.

DATE : DECEMBER 15, 2015

P.C. :

Not on Board. At the request of Mr. Hegde, taken up for admission as the regular Court presided over by Hon'ble Mr. Justice R. M. Savant has passed order 'Not before Me'.

2. Heard Mr. Hegde, learned Counsel for petitioners and Mr. Singh, learned Counsel for respondent No.1 in all the Petitions.

3. By these Petitions under Article 227 of the Constitution of India,

petitioners in each of the Petitions have challenged the judgment and order dated 26.10.2015 passed by the learned Judge presiding over Court Room No.9 below exhibit-13 in R.A.E. Suit. By that order, the learned trial Judge allowed the application made by the respondents-plaintiffs for appointing Architect as Court Commissioner for visiting, inspecting and carrying out measurement of the suit premises with photographs and submitting report.

4. In support of these Petitions, Mr. Hegde strenuously contended that the Court Commissioner cannot be appointed with a view to collecting the evidence. He submitted that petitioners have no objections for respondents-landlords personally visiting the suit premises. However, they are objecting to the landlords' taking inspection along with the Architect and photographer. This amounts to collection of evidence. He submitted that under Order 26, Rules 1 and 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), Court Commissioner cannot be appointed to collect evidence. In support of this submission, he relied upon the decision of this Court in the case of ***Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare, 2001(1) ALL MR 653.***

5. On the other hand Mr. Singh relied upon Section 28 of the Maharashtra Rent Control Act, 1999 (for short 'Act') as also decision of this Court in the case of ***Kamlabai Laxman Mutraj Vs. Bherumal Verimal Haran, 2009 (2) Mh.L.J. 213.*** He submitted that this Court has considered the decision of ***Sanjay Namdeo Khandare (supra)*** in paragraph 7 as also the provisions of Section 28 of the Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. Section 28 of the Act reads thus,

“28. Inspection of Premises – The landlord shall be entitled to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.”

7. Mr. Hegde relied upon the decision of this Court in the case of **Sanjay Namdeo Khandare** (*supra*). In that case, the revision application challenged the order dated 24.07.1998 passed by the Civil Judge, Junior Division, Mahagaon directing appointment of the Court Commissioner. It is material to note there is departure from the earlier Rent Legislation. In that, Section 28 is specifically introduced so as to enable the landlord to take inspection of the tenanted premises. The learned Single Judge of this Court in **Kamlabai Laxman Mutraj** (*supra*) has considered Section 28 as also decision in the case of **Sanjay Namdeo Khandare** (*supra*). In paragraph 7, it was observed thus,

7. In absence of section 28, the submission as raised could have been taken note of, in view of *Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and ors.*, 2001 (2) *Mh.L.J.* 959, but considering the scheme of Mah. Rent Act, specially the section referred above, I see there is no reason to restrict the landlord's right to inspect the premises though the Court Commissioner as done in the present case. Such report may be subject to challenge, unless agreed or approved by the otherside.”

8. The learned Single Judge, after considering the decision in **Sanjay Namdeo Khandare's case** (*supra*) as also Section 28 of the Act observed that he found no reason to restrict the landlord's right to inspect the suit premises. If at all any party is aggrieved by the report, it can challenge the said report.

9. In view thereof, I do not find any merit in these Petitions. Hence, Petitions fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)