

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.33088 OF 2015**

**M/s. Maneklal & Co. ..Petitioner
Vs.
M/s Puriya Industrial Packaging Ltd. &Anr. ..Respondents**

**WITH
WRIT PETITION St. NO.33089 OF 2015**

**M/s. Maneklal & Co. ..Petitioner
Vs.
M/s Puriya Industrial Packaging Ltd. &Anr. ..Respondents**

**Mr. Devang Rohit Sanghvi partner of the Petitioner firm present in both
the Petitions
Mr. Lalit Jain for the Respondent No.1 in both the Petitions**

**CORAM : R. M. SAVANT, J.
DATE : 8th DECEMBER, 2015**

P.C.

1 The above Writ Petitions take exception to two identical orders both dated 27-10-2015 passed by the Learned Judge of the Small Causes Court by which orders, the order passed on application Exhibit 6 in R.A.E. & R Suit No.478/688 of 2006 dated 2-5-2006 and the order passed on application Exhibit 6 in R.A.E. & R Suit No.689 of 2006 dated 8-5-2006, came to be confirmed, and the application Exhibit 9 filed by the Petitioner came to be rejected.

2 The Petitioner herein is the original Defendant to the two eviction Suits filed by the Respondent No.1 herein being R.A.E. & R Suit No.478 /688 of 2006 and R.A.E. & R Suit No.689 of 2006. One of the ground on which the eviction is sought is illegal additions and alterations allegedly carried out by the Petitioner. The Respondent No.1 i.e. the Plaintiff filed an application Exhibit 6 invoking Section 28 of the Maharashtra Rent Control Act 1999. The cause for the same was the fact that inspite the Plaintiff having issued the notice dated 28-11-2005 to the Petitioner demanding the inspection of the suit premises, though the said notice was replied on behalf of the Petitioner, it failed and neglected to give inspection of the suit premises. It was therefore the case of the Plaintiff that it would be just and necessary to appoint the Court Commissioner to inspect the suit premises. In both the Suits the said application Exhibit-6 was considered by the Learned Judge of the Small Causes Court and by the orders dated 2-5-2006 and 8-5-2006 the said application Exhibit 6 was partly allowed in terms of prayer clauses (a) and (b) and Advocate Mr. A. G. Nayak was appointed as the Court Commissioner to visit and inspect the suit premises involved in R.A.E. & R Suit No.478/688 of 2006 and Mr. Datta Khandekar Architect was appointed as the Court Commissioner in R.A.E. & R Suit No.689 of 2006 to carry out the mandate as given in the said clauses (2) and (3) of the said orders.

3 The Petitioner on acquiring knowledge of the said orders dated 2-

5-2006 and 8-5-2006, and as the said orders were passed exparte, filed an application Exhibit 9 for review and setting aside of the said orders. In the said application Exhibit 9, the said orders dated 2-5-2006 and 8-5-2006 came to be stayed pending consideration of the said application Exhibit 9.

4 It appears that the Petitioner had raised a preliminary issue of the jurisdiction of the Small Causes Court to try the Suits on the ground that there is no jural relationship of landlord and tenant between the Respondent No.1 and the Petitioner. The said application it seems was founded on the fact that though the Plaintiff was called upon to give inspection of the documents as regards its claim of being the landlord of the larger property wherein the suit premises are located, the said inspection was not given by the Plaintiff. The said preliminary issue was adjudicated upon by the Trial Court and the Trial court ruled that it has the jurisdiction to try and entertain the Suit. The said order passed by the Trial Court has been taken exception to by the Petitioner herein by filing Civil Revision Application in this Court. The said Civil Revision Application has been admitted, however no interim relief is operating in the said Civil Revision Application as a result of which the Trial Court has proceeded with the Suits in question and that is how the said applications for appointment of the Court Commissioner came to be considered by the Trial Court.

5 The said application Exhibit 9 filed by the Petitioner was considered by the Trial Court and having regard to the provisions of Section 28 of the Rent Control Act 1999, the Trial Court was of the view that the orders passed by it dated 2-5-2006 and 8-5-2006 do not require any interference and accordingly rejected the application Exhibit 9 filed by the Defendant No.1 and confirmed the orders dated 2-5-2006 and 8-5-2006, appointing the Court Commissioner. The Trial Court has whilst rejecting the application has adverted to the prayers in the said application Exhibit 9 wherein the Petitioner has prayed that instead of Advocate Mr. Nayak and Architect Mr. Khandekar, the Registrar of the Court should be appointed as the Court Commissioner. Having regard to the said prayer made in the said application Exhibit 9, the Trial Court observed that the grievance of the Petitioner was not so much as to the appointment of the Court Commissioner but as regards the person who is appointed as the Court Commissioner. As indicated above it is the said orders both dated 27-10-2015 which are taken exception to by way of the above Petitions.

6 The partner of the Petitioner Mr. Devang Sanghavi appeared in person and the entire endeavour of Mr. Sanghvi was towards showing that the appointment of the Court Commissioner is not warranted. Mr. Sanghvi sought to draw this court's attention to the affidavit of Mr. Rohit Sanghvi dated 4-8-2006 in which affidavit it is stated that a guided tour of the premises was

offered to S. P. Jain, of the Plaintiff along with his entire team. Mr. Sanghvi also sought to place reliance on the affidavit of Mr. Neeraj Mishra who was an Advocate working with the partner Devang Sanghvi, who by the said affidavit has sought to confirm the site visit of the partner of the Plaintiff company along with his team. However, in so far as the affidavit of Rohit Sanghvi is concerned, on behalf of the Plaintiff company, the same has been replied to by Mr. N. B. Jere the authorised representative of the Plaintiff. It is stated by Mr. Jere in his affidavit that once he and Mr. S. P. Jain were passing by the suit premises the Deponent Rohit Sanghvi invited them therein “and by pointing out from there he said something in complaining tone to us”. It is further stated in the said paragraph 2 that the same would not amount to inspection of the suit premises. In the said paragraph a further reference is made to the letter dated 28-11-2005 by which the Plaintiff has demanded inspection so as to enable its Architect, photographers and representatives to inspect the suit premises. It is further stated that a mere visit does not amount to inspection. The invitation to enter the premises on behalf of the Petitioner company by Rohit Sanghvi is now sought to be attributed to the fact that a ground was sought to be created by the Defendant for not granting inspection in the event orders were passed by the Trial Court, granting inspection.

7 In my view, the said fact therefore would not impinge upon the rights of the Plaintiff under Section 28 of the said Act to take inspection of the

suit premises. The fact that the issue relating to the jurisdiction of the Court as also the allegations made on behalf of the Petitioner that the inspection of the documents has not been granted would also not impinge upon the right of the Plaintiff to have inspection of the suit premises through a Court Commissioner. The said facts would at the highest impinge upon the merits of the case at the trial of the suit. In that view of the matter no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]