

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

14 WRIT PETITION NO. 8948 OF 2016

RASHTRIYA SHIKSHAN SANSTHA TALODA THROUGH ITS
PRESIDENT NIKHILKUMAR NEMICHAND TUR
VERSUS

NAGAR PARISHAD TALODA

...
Advocate for Petitioners : Deshpande C.R.

...
CORAM : T.V. NALAWADE, J.
DATED : 26th September, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 34 in R.C.S. No. 21/2015 by learned Civil Judge, Junior Division, Taloda, District Nandurbar. It appears that the Court was virtually compelled to pass the order as only pursis was filed by plaintiff under Order 18, Rule 3 of Civil Procedure Code and he had submitted that he wants to reserve the right to begin and he wants to give evidence only in the rebuttal. Heard the learned counsel for petitioner.

2. The suit is filed by the present petitioner to challenge the notices given by the Local Body, present respondent of eviction. It appears that for particular period, the disputed property was given on lease basis and as the period is over, the notices were given. These notices are challenged. This Court is

avoiding to mention the provisions of Maharashtra Municipal Councils Act showing the power and rights of Corporation in this regard and procedure which Corporation is expected to follow for taking possession. For the present purpose, only aforesaid contention can be dealt with.

3. The learned counsel for petitioner took this Court through the provision of Order 18, Rule 1 of C.P.C. and the provision shows the right of the plaintiff to begin, but he can take the decision and he can ask the other side to begin. The provision of Order 18, Rule 1 cannot be read in isolation. This is only procedural provision. The provision of sections 101, 102 and 103 of Evidence Act need to be read first. Issue No. 1 is framed by the Trial Court as under :-

(1) Whether plaintiff proves that, notice dated 05/02/2015, 01/04/2015 issued by defendant is illegal ?

If the aforesaid issue is considered, it can be said that in view of the provisions of sections 101 to 103 of Evidence Act, the plaintiff will fail if the evidence is not given. Issue No. 2 with regard to the use of section 303 by the defendant, Local Body is of no consequence in a matter like present one. In view of the relevant facts quoted above, the entire burden was on plaintiff to

prove that he has right to continue the possession when the period of lease has expired. It is clear that the plaintiff wants to protract the things and he wants to create complication and only with that purpose, he passed the pursis and invited the order of the Trial Court. In view of these tactics played by the plaintiff, this Court holds that this Court is not expected to interfere in the order made by the Trial Court.

4. So, the petition is dismissed. The Trial Court is to dispose of the suit expeditiously and in any case, within six months from the date of receipt of this order. Registrar Judicial is to see that copy of this order is sent to the Trial Court.

[T.V. NALAWADE, J.]

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