

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

980 WRIT PETITION NO. 6497 OF 2016

REKHA GOPAL GAJBEE AND OTHERS
VERSUS
KISHANPRASAD MOTILAL DEVIDAN

...

Advocate for Petitioners : Bora Satyajit S.
Advocate for Respondent : Bajaj Anil S.

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CORAM : T.V. NALAWADE, J.

DATED : 20th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 153 in Regular Civil Suit No. 187/2011 which is pending in the Court of Civil Judge, Junior Division, Jalna. Both the sides are heard.

2. The suit is filed for eviction under the provisions of Maharashtra Rent Control Act by the respondent, plaintiff on the ground like bonafide requirement, default and for pulling down the construction as it is in dilapidated condition. The submissions made show that plaintiff has closed the evidence and defendants have examined two witnesses.

3. After recording of the aforesaid evidence and as some admission is given regarding the condition of the

construction by defendant in the cross examination, the application was moved by the defendants for appointment of Court Commissioner at Exh. 153. They want that one independent engineer or advocate is appointed as Court Commissioner and he gives report about the present condition of the structure.

4. When the suit is filed on a particular ground that building is in dilapidated condition, this Court holds that burden is always on the plaintiff to prove that there is such ground available. In any case, when the evidence is closed by the plaintiff and there is so called admission given by the defendants with regard to the present condition of the structure, it is not necessary to appoint the Court Commissioner as it will delay the further things. When the burden was on plaintiff and the defendants are making such application, it can be said that the defendants are playing delaying tactics. This Court holds that it is not possible to interfere in the order made by the Trial Court. In the result, the petition stands dismissed. The Trial Court is expected to dispose of the suit within six months from the date of receipt of this order.

[T.V. NALAWADE, J.]

ssc/