

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

934 WRIT PETITION NO. 562 OF 2016

SHAIKH NAZIR SHAIKH BASHIR
VERSUS
SYED SHAH AZAMUDDIN NEHRI LATE SYED MOH
IBHARIM NEHRITHROUGH GPA HOLDER AND ANOT

Shri. Milind Madhu Joshi, Advocate, for petitioner.

Shri. P.S. Mehta, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 15 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 29 in Rent Suit No.7/2011 which is pending in the Court of the Civil Judge, Junior Division, Aurangabad. The said application was filed by present respondent, plaintiff of the suit under the provisions of Order XV-A of the Civil Procedure Code (Bombay Amendment) for giving directions to the present petitioner, defendant to deposit the rent amount. The consequence of not depositing the amount if the order is

made is the possibility of striking off the defence. Both the sides are heard.

2) The suit is filed for relief of eviction, recovery of rent and for recovery of water charges. It is the case of the plaintiff that the present petitioner has committed default in making the payment of agreed rent. Other grounds are also mentioned in the suit. In the written statement present petitioner has admitted that he was inducted as a tenant in the suit premises by present respondent though it is contended that the agreed rent was Rs.600/- per month and not Rs.1100/- per month. The agreement of lease is also executed and signature on that document is admitted by present petitioner. It appears that Wakf Board had appeared in the matter in the past and the Wakf Board had contended that the suit property belongs to Wakf institution and the plaintiff is not the owner of the property. On the basis of this contention of the Wakf Board, present petitioner is now contending that the plaintiff cannot be treated as his landlord.

3) The provision of Order XV-A of the Civil Procedure Code as amended for Maharashtra runs as under.

“XV-A - Striking off defence in a suit by a lessor :

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future *mesne profits* from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order of striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation.-- The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.”

4) The aforesaid provision shows that when suit is filed, lessor can make application to the Court for obtaining order against lessee. In such a suit the jurisdiction of the Court under the Maharashtra Rent Control Act is limited and the Court is expected to ascertain as to whether the relationship of landlord and tenant exists. When the defendant has admitted in the pleadings that he had taken premises on rent basis from the plaintiff it is not open to the defendant now to contend that the plaintiff cannot be treated as landlord. There may be dispute between the plaintiff and the Wakf Board but in such a matter the defendant has no *locus standi* in such dispute. The learned counsel for the petitioner placed reliance on the case reported as **1997(1) Bom.C.R. 683** (Panaji Bench of this Court) (**Shri Shashikant Karbotkar v. Shri Suresh R. Karbotkar**). The facts of this reported case were totally different and the existence of relationship itself was in dispute. Thus the observations made in this case by the Panaji Bench cannot be of any use to the present petitioner.

5) Care of the interests of the Wakf Board can be taken by the Court by keeping the amount in the Court till the disposal of the suit but such order is possible against the defendant, lessee and the defendant needs to comply with such order if he wants to avoid the consequence of not depositing such amount. This Court holds that no case is made out for interference in the order made by the trial Court. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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