

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10277 OF 2016
ALONG WITH
WRIT PETITION NO.10278 OF 2016

M/s. Moosa Zari & Co.] ... Petitioner

Versus

Mr. Mustansir Gulam Husein and Ors.] ... Respondents

Mr. Harish Pawar for Petitioner.

CORAM :- R. G. KETKAR, J.
DATE :- SEPTEMBER 01, 2016

P. C. :-

1. Not on board. At the request of Mr. Pawar, learned Counsel for petitioner, taken up for admission.
2. Heard Mr. Harish Pawar, learned Counsel for petitioner, at length.
3. By these petitions under Article 227 of the Constitution of India, the petitioners (hereinafter referred to as 'defendants') have challenged the Judgment and Orders dated 08/08/2016 passed by the learned Trial Judge. By these orders, the learned Trial Judge allowed applications made by the respondents (hereinafter referred to as

'plaintiffs') at Exh.13 in R.A.E. Suit No.239 of 2015 and R.A.E. Suit No.238 of 2015 and permitted the plaintiffs to inspect the suit premises along with the Architect and Photographer, as prayed, at a reasonable time after giving prior notice to the defendants.

4. In support of these petitions, Mr. Pawar vehemently contended that the plaintiffs had taken inspection of the suit premises in pursuance of letter dated 29/04/2013. He submitted that the plaintiffs have instituted suit alleging that the defendants have carried out additions and alterations of permanent nature and to that effect, through their Advocate, they have lodged complaint with the Corporation on 28/01/2006. Even after 2006, the plaintiffs alleged that the defendants have carried out unauthorized constructions of permanent nature in the suit premises. He has taken me through the complaint dated 28/01/2006 lodged by the plaintiffs through Advocate to the Assistant Engineer, Water Department, 'B' Ward, M.C.B.M., Ward Officer, Mumbai. He further submitted that on 31/07/2015, the learned Trial Judge has framed issues. In fact, by prayer clause (b), the plaintiffs have prayed for inspection of the suit premises along with their representative, Architect and Photographer. However during the pendency of the suit, they did not take out any application for interim relief. It is only after the issues are settled, the plaintiffs took out application for inspection. This amounts to collection of evidence. He submitted that having regard to the conduct of the plaintiffs, they are not entitled to relief of inspection, as prayed in the application.

5. Mr. Pawar further submitted that the defendants are tenants in respect of the suit premises right from 1972. In view of the *inter se* dispute between the partners of the defendants, Court receiver was appointed in the year 1982. Till date, appointment of Court Receiver continues. In other words, the suit premises are *custodia legis*. The defendants are paying rent and other charges to the Court Receiver. He submitted that all these aspects were overlooked by the learned Trial Court while passing the impugned order. He submitted that instead of leading evidence, the plaintiffs have filed application for collecting the evidence.

6. I have considered the submissions advanced by Mr. Pawar and also perused the record. Perusal of communication dated 29/04/2013 shows that by this communication, the plaintiffs informed the defendants that when they came for inspection and taking photographs, the employee of the defendants refused to take inspection and photographs. The plaintiffs observed that massive renovations were going on without their permission. Perusal of the plaint, and in particular paragraphs 5 and 6 thereof, shows that the plaintiffs have alleged that even after 2006, the defendants have carried out unauthorized construction of permanent nature in the suit premises.

7. Section 28 of the Maharashtra Rent Control Act, 1999, (for short, 'the said Act') reads thus :-

“28. Inspection of premises :- The lanalord shall be entitled to inspect the premises let or given on licencee, at a reasonable time after giving prior notice to the tenant, licensee or occupier.”

8. While allowing the application, the learned Trial Judge had referred to the decision on this Court in ***Empeegee Portfolio Services Ltd. Vs. Mrs. Sharada Navinchandra Shah***¹. For the reasons recorded in paragraphs 7 and 8 of the impugned order, I do not find that the defendants have made out any case for interfering with the impugned orders. In view of Section 28 of the said Act, the plaintiffs are entitled to inspect the premises let our or given on licence after giving reasonable notice to the tenant. In view thereof, the petitions fail and the same are dismissed.

(R. G. KETKAR, J.)

¹ 2009 (1) MR 516