

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9637 OF 2015

M/s. Beauty Art and Cleaners Private Limited ... Petitioner
Vs.
Madhuri Mahesh Ganore and others ... Respondents

Ms Kavita Shah for Petitioner.
Mr. G. S. Godbole, Senior Advocate i/b. Mr. Parag Tilak for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JULY 8, 2016

P.C. :

Heard Ms Shah, learned Counsel for petitioner and Mr. Godbole, learned Senior Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as defendant, has challenged the order dated 31.08.2015 passed by the learned Judge, presiding over Court Room No.22 of the Court of Small Causes at Mumbai, below exhibit-31 in L.E.&C. Suit No.29/33 of 2012. By that order, the learned trial Judge had re-cast the issues, which were already framed on 29.10.2013.

3. In support of this Petition, Ms Shinde has taken me through the evidence of P.W.1 and submitted that P.W.1 admitted that defendant is in possession of the suit premises since 1956. P.W.1 further admitted that defendant is a tenant and the plaintiff is collecting rent from the defendant. She submitted that as the P.W.1 admitted tenancy of defendant, there was no necessity of framing additional issues and more particularly re-cast issues No.4 to 6. She submitted that defendant may be permitted to cross-examine P.W.1 further as after the defendant filing

Purshis for closing evidence, the issues were re-cast.

4. On the other hand, Mr. Godbole submitted that by the impugned order, the learned trial Judge has specifically given liberty to the parties to adduce evidence, if any. He further submitted that the additional issues were framed in view of the specific contentions advanced by the defendant in the written statement. He submitted that in case the plaintiffs intend to adduce evidence further, the defendant would be at liberty to cross-examine the witness of the plaintiff in that regard.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that defendant has contended that the agreements / documents entered into between the parties were with a view to circumventing the prohibition imposed by the Rent Act and that the documents / agreements so executed are sham and bogus and were not intended to be acted upon. In view thereof, I do not find that the learned trial Judge has committed any error in re-casting the issues. Perusal of issues No.4 to 6 also shows that the burden is on the defendant to establish the case made out in the written statement. As noted earlier, the learned trial Judge has given liberty to the parties to adduce evidence. In view thereof, defendant is undoubtedly at liberty to adduce evidence in view of the re-casting of the issues, if it so desires. At the same time, if plaintiffs want to lead further evidence, defendant would be obviously at liberty to cross-examine the said witness.

6. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is expressly made clear that where a decree is appealed from by the petitioner, any error, defect or

irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Minal Parab