

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO.140 OF 2016

Mr. Sherali Alimast Khan & Ors.

.. Applicants

Vs

Mr. Raymond Pimenta

.. Respondent

Mr. Farhan Khan i/b. S. M. Kazi for the Applicants.

Mr. Anand Mishra a/w Bhojraj Baral for the Respondent.

***CORAM : N.M.Jamdar, J.
Wednesday 7 December 2016.***

Oral Order :

. By order dated 11 April 2016, notice was issued to the Respondent for final disposal of the Revision Application, accordingly, taken up for disposal.

2. Liberty to convert the Civil Revision Application in a Writ Petition. Amendment to be carried out forthwith.

3. The Applicant has challenged the order dated 4 November 2015, rejecting the application taken out by the Applicant below Exh. 15 in R.A.E. Suit No. 301 of 2015 filed by the Respondent. The application was taken out by the Applicants for appointment of Court Commissioner to submit a report regarding

condition of the suit premises and to permit the Applicant to carry out tenantable repairs or to direct the Respondent to carry out these repairs.

4. Heard the learned counsel for the parties.

5. The learned counsel for the Applicant submitted that during the pendency of the suit, it is the duty of the Respondent-landlord to keep the premises in habitable condition. He submitted that no prejudice will be caused to the Respondent-landlord, if the premises are maintained in good condition. The learned counsel submitted that the minor tenantable repairs have been sought. The learned counsel for the Respondent on the other hand, submitted that under the garb of repairs the Applicants are in fact trying to reconstruct the property, which should not be permitted.

6. The learned Small Causes Court Judge, has refused to appoint the Court Commissioner on the ground that the Commissioner cannot be appointed to gather evidence, at the same time has expressed the prima facie opinion based on the photograph that condition of the premises is not good. In these circumstances, appropriate course of action would have been to appoint Court Commissioner, who would place on record the exact position of the suit premises and then determine whether the premises need to be repaired or reconstruction is sought. As far as, the observation that

the Applicant is not entitled to even make an application for maintaining the premises on the ground that he is a trespasser is on the merits of the suit which is yet pending. Therefore, if the factual situation is that the premises only need minor repairs then if these repairs carried out that it will ensure to the benefit of the Respondent also. However, if reconstruction is being sought under the garb of repairs then the Respondent will be entitled to object to the same. Therefore to decide this controversy, report of the Court Commissioner is necessary.

7. Therefore, the impugned order is quashed and set aside. The application filed by the Applicant below Exh.15 stand restored to file. The learned Small Causes Court Judge, will appoint a suitable person as Court Commissioner. Depending upon the report of the Commissioner the learned Judge will take a decision as to whether the application filed by the Applicant and the relief sought therein need to be considered or not. It is clarified that these directions are only to appoint Court Commissioner so as to enable the Small Causes Court Judge to adjudicate the controversy properly and it is not a reflection on the merits of the rival contention as regard the Application. The Writ Petition is accordingly disposed of.

(N.M.Jamdar, J.)