

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7805 OF 2017
(Gamir Shaikh Babu and another Vs. Nawab Shaikh Gulab)

Mr.B.S.Deshmukh, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 27/02/2017 passed by the Trial Court by which application Exh.13 praying for striking off the defence of the defendant in RCS No.89/2010 for non-payment of arrears of rent of Rs.9,600/-, has been rejected.

2. Learned Advocate for the petitioners has criticized the impugned order. He draws my attention to the 6 grounds formulated by him in the memo of the petition. It is contended that the petitioners are the purchasers of the suit property from the original landlord. The respondent is a tenant. RCS No.89/2010 was filed by the petitioners claiming recovery of unpaid rent and attornment. He moved an application on 29/07/2010 Exhibit 13 praying for striking off the defence of the defendant under Order 15-A (Maharashtra Amendment) since the defendant has not paid the arrears of rent.

3. The Trial Court has rejected the said application by the impugned order dated 27/02/2017 by concluding that the relationship between the petitioners and the tenant has been disputed. The tenant has also challenged the purported sale deed between the petitioners and the original landlord in a Civil Suit No.231/2009. The suit initiated by the instant petitioners is lodged in 2010. As both the matters have been clubbed and the Trial Court is considering the dispute of relationship raised by the tenant, Exhibit 13 filed by the petitioners was rejected.

4. It is apparent that certain disputed issues of relationship are being gone into by the Trial Court. The tenant has challenged the sale deed said to be in between the petitioners and the landlord by which he has purchased the property at issue. The Trial Court has concluded that in the backdrop of the disputed questions, it would not be justifiable to direct the defendant to pay the arrears or strike off his defence.

5. I do not find that the view taken by the Trial Court could be termed as being perverse or erroneous or likely to cause grave injustice to the petitioners. Merely because a second view is possible,

the impugned order cannot be set aside.

6. In view of the above, this petition, being devoid of merit, is dismissed. Needless to state, the Trial Court would consider the claim of the petitioners in the suit on its own merits after the recording of oral and documentary evidence.

(Ravindra V.Ghuge, J.)