

916 WRIT PETITION NO.8714 OF 2012

Versus

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DATED : 4th July, 2017

PER COURT :-

1. The petition is filed to challenge the order made on Exh.31 in R.C.S. 26 of 2006 by 19th Jt. Civil Judge (J.D.), Aurangabad. The application at Exh.31 was filed by the plaintiff / landlord for appointment of Court Commissioner. The suit is filed for eviction on the ground of illegal construction of permanent nature made by the tenant. After hearing both the sides, the application is allowed by the Trial Court Judge.

2. The learned counsel for present petitioners / original defendants submitted that, in such case, the appointment of Court

Commissioner would amount to collection of evidence and that cannot be allowed. He placed reliance on observation made by this court at “***Syed Mushtaque Ahmad Syed. Ismail & others Vs. Syed Ashique Ali Khan Haidar Ali, [2012(2) Bom.C.R.790]***” of Nagpur Bench. This court has carefully gone through the observation made by this court in the case cited by the learned counsel. The facts of the said matter were totally different and the dispute was of different nature.

3. It is true that, the landlord has right of inspection of the tenanted premises, but only due to that, Court cannot expect the landlord to visit the premises and give evidence on the basis of its personal observations. When a suit is filed for relief of ejectment on such ground, it is always desirable to have independent evidence on such ground. When there is an allegation that, construction is made illegally, it is not possible for landlord to collect the record of permission from local body. Considering the nature of allegations made by the landlord that the tenant has made construction by virtually making encroachment over other space, not given on rent basis, it is desirable to have the present state of affair before the Court. There is allegation that, even after filing of the suit, construction was continued by the tenant and for that there is no permission of the landlord. There is one more allegation that, tenant

has kept two water tanks of 3000 liter capacity each on the terrace and that is causing damage to the construction of the building. The learned counsel for tenant submitted that, the landlord can take photographs of the storage tank and such evidence can be given. Such submission cannot be accepted. When a suit is filed, to avoid further complications and untowards instances, it is always desirable to appoint Court Commissioner so that the material in respect of the allegation is brought before the Court. Such material cannot cause prejudice to the tenant as he knows as to what kind of premise was given on rent to him and it is open to him to say that the construction was already there. If there is a new construction and there is an evidence on the previous premise given on rent basis to the tenant, such dispute can be decided only by this way and in such dispute tenant cannot say that Court Commissioner cannot be appointed to place such material before the Court.

4. This Court has no reason to interfere in the order passed by Trial Court. Petition stands dismissed.

(T.V.NALAWADE, J.)

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