

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 632 OF 2016

Pritpalsingh Rajendrasingh Bagga,
age 44 years, occ. Business,
R/o Behind Shivaji garden,
Amalner, Taluka Amalner,
District Jalgaon

...Petitioner
Orig. Plaintiff

VERSUS

Chudaman Shrawan Chaudhari,
age 47 years, occ. Business,
R/o Old Pardhi Wada, Amalner,
Taluka Amalner, Dist. Jalgaon

...Respondent
Orig. Defendant

...

Shri G.S.Rane, Advocate for Petitioner
Shri P.B.Patil, Advocate for respondent sole

...

CORAM : N.W.SAMBRE, J.

DATED : 15th November, 2017

PER COURT : -

Under the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as, 'the Rent Act'), in a suit for possession instituted by the petitioner, an application under Order XXVI Rule 9 of the Code of Civil Procedure came to be moved for appointment of Commissioner, which came to be rejected by the order impugned dated 19.11.2015, passed by

the learned 2nd Joint Civil Judge, Junior Division, Amalner.

2. Learned counsel Shri Rane would invite my attention to the provisions of Section 28 of the Rent Act, to submit that the said Section contemplates intervention qua the inspection of the suit premises at the behest of landlord, provided there is notice/intimation to the tenant. According to him, when the suit is instituted under the provisions of the Rent Act, the provisions of Order XXVI Rule 9 of the Civil Procedure Code would be secondary to that of the provisions of Section 28 of the Rent Act. He would then urge that it cannot be that both the provisions could be invoked at the same time, as the rent suit is also governed by the provisions of Code of Civil Procedure, in relation to the Rent Act. He submits that once present petitioner/plaintiff has laid foundation in the suit qua possession of the tenanted property on the ground that the respondent, by demolishing existing structure has rebuilt the same, it was expected of the Trial Court to allow the application. He would then urge that there is specific pleading in the plaint in respect of the claim made. The observations of the learned trial Court that if the application is allowed, it would amount to collection of evidence, is contrary to the suit, particularly Section 28 of the Rent Act. He would draw support from the judgment in the matter of **Kamalbai Laxman Mutraj vs Bherumal Verimal Haran**, reported in **2009 (2) Mh.L.J. 213**.

3. Per contra, learned counsel Shri Patil would strenuously urge that the provisions of Order XXVI Rule 9 of the Code of Civil Procedure are prematurely invoked. The provisions of Section 28 of the Rent Act can be invoked only prior to filing of the suit. According to him, since the Trial Court has noticed that the act of the petitioner amounts to collection of evidence, the Trial Court has rightly rejected the claim which does not call for any interference.

4. Considering the scheme of Section 28 of the Rent Act and the Order XXVI Rule 9 of the Civil Procedure Code, plain reading of Section 28 of the Rent Act prima facie demonstrates that the same is incorporated for the benefit of the landlord. What is contemplated is that if landlord requires inspection of his premises, all that is required is an advance intimation to the tenant. The provisions of said Section do not contemplate any permission from any authority, and as such, Section 28 of the Rent Act can be invoked by landlord, irrespective of the stage of the proceedings viz either before filing suit or before final arguments in the suit are concluded.

5. In the present case, if averments in the plaint are perused, the petitioner has laid specific foundation qua the nature of old structure and demolition of the same by the respondent/defendant/tenant for reconstruction and in view thereof, in my opinion, the learned Trial Court should have allowed the application moved by the petitioner qua inspection

of the suit premises, may be with the assistance of technical person.

6. In my opinion, the law cited by the learned counsel for the petitioner in the matter of **Kamlabai** (supra), will be of assistance to the petitioner.

7. In view thereof, the order impugned dated 19.11.2015 passed by the learned 2nd Joint Civil Judge, Junior Division, Amalner, below Exh. 18, in Regular Civil Suit No. 117 of 2013, is hereby quashed and set aside.

The application Exh. 18 stands allowed in above terms.

8. Writ Petition is disposed of accordingly.

[N.W.SAMBRE, J.]

dbm