

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

WRIT PETITION STAMP NO.4792 OF 2017

Shri. Harshvardhan Prabhakar Patki and another ..Petitioners
Versus
Shri. Pitamber Shankarrao Mahajan and another ..Respondents

**ALONGWITH
CIVIL APPLICATION NO.675 OF 2017
IN
WRIT PETITION STAMP NO.4792 OF 2017**

Shri. Pitambar Shankarrao Mahajan ..Applicant

IN THE MATTER BETWEEN

Shri. Harshvardhan Prabhakar Patki and another ..Petitioners
Versus
Shri. Pitamber Shankarrao Mahajan and another ..Respondents

Shri. Shivshankar D. Patil for the Petitioners.
Shri. Satyajeet P. Dighe for the Respondent No.1 and for the
Applicant in Civil Application.

CORAM : R. M. SAVANT, J.
DATE : 5th APRIL, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 24.01.2017 passed by the Learned 4th Joint Civil Judge Senior Division, Nashik, by which order, the preliminary issue viz. Whether the Court has jurisdiction was answered in favour of the Plaintiff.

2 The Respondent No.1 herein is the original Plaintiff who has filed the suit in question being Regular Civil Suit No.748 of 2016 for a declaration that he is a tenant in respect of the suit premises and for injunction. It is the case of the Plaintiff that the Petitioner herein i.e. the Defendant No.1 is the owner of the suit property and that the Plaintiff is residing therein as a tenant. It was the case of the Plaintiff that initially he was residing as a licensee, however, after the licence period was over the Plaintiff is residing in the suit premises as a tenant. It is the case of the Plaintiff that the Defendant has accepted rent of Rs.4800/- from the Plaintiff till January 2016. The Defendant No.1 i.e. the landlord has raised the issue of jurisdiction by filing an application which was numbered as Exh.37. The said application was filed invoking Section 9A of the Civil Procedure Code (For short "CPC"). It is the case of the Defendant No.1 that there was a Leave and Licence agreement between the Plaintiff and the Defendant No.1 and therefore the suit was not maintainable before the Civil Court in terms of Section 42 of the Maharashtra Rent Control Act, 1999. The Trial Court in terms of the application, framed the preliminary issue, which was to the following effect :-

“(i) Whether this court has jurisdiction to try and entertain the suit ?”

The Trial Court having regard to the averments in the plaint and by observing that the averments in the plaint are material for determination of the issue of jurisdiction and does not depend upon the defence taken in the written statement, held that it had the jurisdiction to try and entertain the suit. The Trial Court having regard to the material on record held that prima-facie the fact that the Plaintiff is a tenant can be seen from the said material. The Trial Court accordingly as indicated above, answered the preliminary issue of jurisdiction in favour of the Plaintiff. In my view, having regard to the averments in the plaint, reference to which was drawn by the Learned Counsel appearing for the Plaintiff, the order passed by the Trial Court holding that it had the jurisdiction to try and entertain the suit cannot be faulted with. No case for interference in the writ jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

4 In view of the dismissal of the above Petition, the Civil Application filed by the Respondent No.1 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]