

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11819 OF 2017

Sunil Mahadeo Roge	...Petitioner
<i>Versus</i>	
Dadyseth Charity Trust & Ors	...Respondents

Mr Sharad Jani, *for the Petitioner.*
Ms Phiroza I Khosrani, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 8th November 2017

PC:-

1. The tenant complains that by the order of 6th September 2017 a Single Judge of the Court of Small Causes at Mumbai impermissibly allowed the 1st respondent/landlord's application for appointment of a Court Commissioner to inspect the suit premises along with a photographer to submit a report in respect of factual situation. The petitioner says that this is nothing but an impermissible exercise in gathering evidence. This Court should, therefore, intervene and set aside the order.

2. In fact the Trial Court followed the decision of this Court in *Kamlabai Laxman Mutraj v Bherumal Verimal Haran*¹ in regard to inspection by a landlord of premises given on tenancy. In that case

¹ 2009 (4) Bom CR 453.

as well the landlord filed an application for appointment of a Commissioner for proper measurement and inspection and this was treated as an application within the four corners of law.

3. What the petitioner says is that only ground for eviction in the plaint is non-user and subletting. Now if the tenant does not permit the landlord to inspect the premises it is impossible for the landlord to ever know what, if anything, the tenant has done within those premises. If the tenant has made no changes whatsoever, then the tenant has nothing at all to fear or apprehend from the inspection and, should, on the contrary, welcome it. Apart from anything else a positive report in favour of the tenant might well work to his advantage at the trial of the suit.

4. It is not possible in my view to conclude that the order impeached is so utterly implausible that it can be said to be perverse in law.

5. The Writ Petition is rejected. There will be no order as to costs.

(G. S. PATEL, J)