

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

WRIT PETITION NO. 10182 OF 2016

DEELIP MANIKLAL JAISWAL
VERSUS
SATISH CHANDU GANGARAM JAIKAR AND OTHERS

...
Advocate for the Petitioner : Shri P P Patni.
Advocate for the Respondents : Shri Kasliwal Ajit D..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th September, 2018

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the order dated 08.07.2016 by which, the Trial Court has rejected the application Exhibit 41 filed by the Petitioner seeking appointment of a court commissioner for inspecting the rented premises.

2 The contention is that since the Petitioner/ Plaintiff is the landlord and the suit property is said to be in dilapidated condition, which is an incorrect contention of the Defendants/ Tenants, the Petitioner/ Plaintiff moved an application seeking appointment of a court commissioner under Order 26 Rule 9 of the Code of Civil Procedure.

3 Reliance is placed on the judgment of this Court in the matter of *Smt.Kamlabai Laxman Mutraj vs. Bherumal Verimal Haran, 2009*

(2) Mh.L.J. 213 : 2009 (4) Bom.C.R. 453, wherein, this Court has concluded that when Section 28 of the Maharashtra Rent Control Act, 1999 specifically permits the landlord to inspect the property, the general provision of appointment of a court commissioner under the Code of Civil Procedure cannot be read into it.

4 The learned counsel for the Respondents/ Defendants has supported the impugned order contending that the suit is at a final hearing stage. The recording of oral evidence was concluded in April, 2016 and the matter was posted for advancing final oral submissions. The Plaintiff has approached this Court and has prayed for staying of his own suit. By order dated 14.02.2017 passed by this Court (Coram : S.B.Shukre, J.), the suit has been stayed.

5 It appears from the record that both the sides have led oral and documentary evidence and have closed the recording of their evidence in April, 2016. The contention of the Defendants that the suit property is in dilapidated condition and that iron sheets have been fixed to support the shop and avoid it's collapsing, was put forth in the affidavit of the defendants on 04.01.2016. The Plaintiff cross examined the Defendants and confronted the Defendants even on the above contention set out in paragraph 7 of the affidavit. Thereafter, the evidence was closed. Yet, the Plaintiff did not choose to make an application for inspection of the property through a court commissioner immediately after

receiving the copy of the affidavit in lieu of examination-in-chief of the defendants.

6 In *Smt.Kamlabai Laxman Mutraj* (supra), this Court has held that an application seeking inspection of the rented premises by the landlord has to be made within a reasonable time. Though it is open to interpret as to what would reasonable time mean, the fact situation in this case indicates that though the defendants took a specific stand in the affidavit filed on 04.01.2016, the Plaintiff did not choose to make an application promptly for appointment of a court commissioner.

7 In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.