

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7746 OF 2018

Suryakant B. Chawan ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7742 OF 2018

Narayan Hari Kumbhar ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7743 OF 2018

Kantaben N. Dedhia ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7744 OF 2018

Ambadas A. Kapote ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7745 OF 2018

Vrushali Rajpurkar ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7747 OF 2018

Nitin Vasantraai Merchant ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7748 OF 2018

Dinesh Chandan Timbadia ... Petitioner

Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7749 OF 2018

Mukesh Shamalji Goda ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7750 OF 2018

Chandrika S. Jobanputra ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7751 OF 2018

Lalitkumar H. Vibhkar ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7752 OF 2018

Neela Mahendra Sanghvi ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

WITH
WRIT PETITION NO.7753 OF 2018

Suresh Kapote ... Petitioner
Vs.
Vandana Builders through its Partners ... Respondents

Mr. P. M. Shah for Petitioner in all the Petitions.
Mr. Y. C. Naidu for Respondents in all the Petitions.

CORAM : R. G. KETKAR, J.
DATE : JULY 20, 2018

P.C. :

Not on Board. At the request of Mr. Shah, taken up for admission.

2. Heard Mr. Shah, learned Counsel for the petitioner and Mr.Naidu, learned Counsel for the respondents in all the Petitions at length.

3. By these petitions under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', in each of the Petitions have challenged the judgment and order dated 07.06.2018 passed by the learned Judge, Court Room No.40 of the Court of Small Causes, Mumbai (Bandra Bench) in an application filed by the respondent-plaintiff under Section 28 of the Maharashtra Rent Control Act, 1999 (for short 'Act') for inspection of the suit premises. As the common questions of law arise in these Petitions, the same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Petitions, facts from Writ Petition No.7746 of 2018 are taken into consideration.

4. In support of this Petition, Mr. Shah submitted that in paragraph 2 of the plaint, plaintiff has given detailed description of the suit premises. There is no lacuna / deficiency in describing the suit premises. He submitted that the plaintiff has invoked ground of additions and alterations of permanent nature without written permission of the landlord, as contemplated by Section 16(1)(b) of the Act. Plaintiff has filed application inter alia praying for directing the defendant to give inspection along with his Structural Engineer and further allowing the plaintiff to take photographs of the suit premises. He submitted that taking photographs by the plaintiff will amount to abuse and misuse of provisions of law. He submitted that basically in the Suit, plaintiff has not prayed for inspection of the suit premises. He, therefore, cannot go beyond the assertions made in the plaint. He submitted that by order dated 04.05.2018, the learned Single Judge of this Court in Notice of Motion (L) No.1107 of 2018 had appointed Mr. Amol Shetgiri of

Shetgiri & Associates as independent Architect to visit the suit building on 11.05.2018 and submit his report to the Court. As the Court Commissioner is already appointed, no useful purpose will be served by allowing application filed by the plaintiff. Lastly, Mr. Shah relied upon the decision of this Court in ***Syed Mushtaque Ahmad Vs. Syed Ashique Ali Khan*, 2012 (1) ALL MR 80** to contend that the Court Commissioner cannot be appointed to collect the evidence and fill up the lacuna. For all these reasons, he submitted that the impugned order cannot be sustained and is liable to be set aside.

5. On the other hand, Mr. Naidu supported the impugned order. He submitted that the learned trial Judge has considered the judgments of this Court in *Empeegee Portfolio Services Pvt. Ltd. Vs. Sharada Navinchandra Shah*, **2009 (1) Bom.C.R.579** and *Kamlabai Laxman Mutraj Vs. Bherumal Verimal Haran*, **2009 (4) Bom.C.R. 453**. He also relied upon Section 28 of the Act to contend that as per that Section, landlord is entitled to inspect the suit premises at a reasonable time, after giving prior notice to the tenant. In the present case, plaintiff has given notice dated 13.02.2018, and therefore, the learned trial Judge was fully justified in allowing the application.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 28 of the Act reads thus,

28. Inspection premises.- The landlord shall be entitled to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.

7. It is important to bear in mind that prior to coming into force of the Act on 31.03.2000, the field was governed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The said Act did not

recognize right of a landlord to inspect the premises let or given on license. The said right is recognized for the first time in terms of Section 28 of the Act. The Statute has recognized right of a landlord to inspect the premise let or given on the license at a reasonable time after giving prior notice to the tenant or licensee or occupier. The amplitude of Section 28 of the Act is neither controlled nor curtailed by Order XXVI of C.P.C.

8. In paragraph 16, the learned trial Judge, after referring to Section 28, observed that Section 28 gives right to landlord to inspect the premises given on rent. Landlord has given prior notice to the tenant before inspection. Plaintiff has produced office copy of the notice, which was given under Section 28 and the defendant has failed to comply with that notice, and therefore, plaintiff has complied provisions of Section 28 of the Act. The learned trial Judge referred to the decision of this Court in **Empeegee Portfolio Services Pvt. Ltd.** (*supra*) where the Court has referred to Section 28 as also Order XXVI of C.P.C. The learned Single Judge observed in paragraph 4 that the application was not made under Order XXVI of C.P.C. and Section 28 of the Act nowhere restricts the right of the landlord to take inspection of the suit premises. The scope and purpose of Order XXVI of C.P.C. is altogether different. In paragraph 18, the learned trial Judge referred to the decision in **Kamlabai Laxman Mutraj's case** (*supra*), where the learned Single Judge considered Order XXVI, Rule 9 and observed that when landlord moves application for appointment of Commissioner for proper measurements and inspection of the premise, it cannot be treated as an application under Order XXVI, Rule 1 of C.P.C. In paragraph 19, the learned trial Judge also dealt with the submission that the prayer of plaintiff for inspection of the suit premises is beyond the scope of the plaint and larger than the plaint. The learned trial Judge observed that

the Suit is between landlord and tenant and is governed by the provisions of the Act. Section 28 gives right to the landlord to inspect the suit premises.

9. Mr. Shah relied upon order dated 04.05.2018 passed by the learned Single Judge of this Court. A perusal of that order clearly shows that Mr. Amol Shetgiri of Shetgiri & Associates was appointed as independent Architect for visiting the suit building and submitting report qua the condition of the building. The plaintiff therein had contended that the suit building is completely dilapidated and it will not be able to withstand the coming monsoon. It is in that context, the learned Single Judge has appointed the Architect.

10. For the reasons recorded in the impugned order, I do not find that the learned trial Judge has committed any error in granting the application. Hence, Petitions fail and the same are dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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