

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.14257 OF 2017**

Uday Vijaykumar Jamdade & Ors.] Petitioners

Vs.

Prashant Manohar Lengade] Respondent

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Mr. Rahul Walvekar i/b Indrajeet Joshi, for Petitioners.
Mr. S.A. Rajeshirke, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 2nd JULY, 2018.

P.C:

Heard Mr. Walvekar, learned Counsel for the petitioners and Mr. Rajeshirke, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “defendants” have challenged the order dated 5th October, 2017 below Exhibit 114 and order dated 23rd November, 2017 below Exhibit 116 passed by the learned 4th Joint Civil Judge, Junior Division at Kolhapur in Regular Civil Suit No.1913 of 2012. By order dated 5th October, 2017, the learned trial Judge rejected the application made by the defendants under Order-XVI, Rules- 1 and 2 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for issuing summons to 17 witnesses. By order dated 23rd November, 2017, the learned trial Judge rejected the application made by the defendants under Order-XIV, Rule-5 of the C.P.C for framing additional issues.

3. In support of this Petition, Mr. Walvekar strenuously contended that plaintiff has denied his signature on the agreement dated 12th December, 1965 at Exhibit 88. As the plaintiff has denied his signature on this agreement, it is necessary to issue summons to the witnesses for proving contents of the said agreement. It is also necessary to obtain opinion of hand-writing expert.

4. In so far as order dated 23rd November, 2017 below Exhibit 116 is concerned, he submitted that in paragraph 5 of order, the learned trial Judge noted that proposed Issue No.1, whether the plaintiff proves that the suit is within limitation is covered by Issue No.6. As far as proposed Issue No.4, whether the plaintiff proves that he has cause of action to institute the suit is concerned, he has observed that it is not necessary to frame that issue. As far as proposed issue No.2, whether the suit is maintainable without the termination of the agreement dated 12th December, 1965 is concerned, the learned trial Judge noted that the suit premises are within the municipal limits of Kolhapur Municipal Corporation and, therefore, Rent Act is applicable and provisions of the Transfer of Property Act, 1882 are not applicable. As far as proposed issue No.3, whether the plaintiff proves that the suit is maintainable without the service of proper notice to quit is concerned, the learned trial Judge noted that one of the grounds invoked by the plaintiff is arrears of rent. The learned trial Judge observed that apart from ground of arrears of rent, the plaintiff has claimed possession on various grounds. The same can be decided on the basis of issue No.6 which is already framed. Mr. Walvekar submitted that reasons given by the learned trial Judge in paragraph 5 are un-sustainable. Petition requires consideration On the other hand, Mr. Rajeshirke supported the impugned orders.

5. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as order

dated 5th October, 2017 is concerned, the learned trial Judge noted in paragraph 2 that the plaintiff did not deny relationship of landlord and tenant and, therefore, there is no need to examine witnesses to prove the agreement. That apart, defendants have already examined D.W. 5 Shivkumar Dattatray Mohite to prove the said agreement. For the reasons recorded in paragraph 2, I do not find that the learned trial Judge has committed any error. In paragraph 3, the learned trial Judge noted that the defendants are prolonging the matter without proper reasons. The very fact that the defendants filed application for issuing witness summons to 17 witnesses fortifies the conclusion recorded in paragraph 3 of the order. I, therefore, do not find that the learned trial Judge committed any error while passing the order dated 5th October, 2017.

6. In so far as order dated 23rd November, 2017 is concerned, for the reasons recorded in paragraph 5 of that order, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, 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 memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]