

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4103 OF 2019

DIGAMBAR BABURAO KANBALE THROUGH GPA VISHWANATH

DIGAMBAR KANBALE

VERSUS

SK SALAR SK MOINODDIN

...

Advocate for Petitioner : Mr.Mahesh P.Kale

Advocate for Respondent : Mr.Shaikh Wajeed Ahmed

...

CORAM : RAVINDRA V. GHUGE, J.

DATE : 12th December, 2019.

PER COURT :-

1. I have heard the strenuous submissions of the learned Advocate for the petitioner, who has vehemently criticized the impugned order dated 05/12/2018.

2. Contention is that an appeal is a continuation of the suit. The petitioner/original plaintiff has filed the application for seeking addition of a prayer clause as an alternative relief

for seeking recovery of possession of the immovable property, which was handed over to the respondent under a decree passed in Regular Civil Suit No.47/2007. It is conceded that the present suit is purely for recovery of rent and the petitioner can avail of a remedy for preferring a suit for eviction of a tenant from the suit premises.

3. Considering the above, since I find that introducing the prayer of recovery of possession would be an independent cause of action, the impugned order dated 05/12/2018 cannot be faulted and cannot be termed as being perverse and erroneous. This petition, being devoid of merits, is therefore, dismissed.

4. However, the petitioner would be at liberty to avail of a remedy as is permissible in Law.

(RAVINDRA V. GHUGE, J.)