

CORAM : R. G. KETKAR, J.
DATE : MARCH 14, 2019

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the order dated 10.01.2019 passed by the learned Judge, Court Room No.17 of the Court of Small Causes at Bombay below exhibit-20 in R.A.E.Suit No.1518 of 2015. By that order, the learned trial Judge allowed the application made by the respondents-plaintiffs under Section 28 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and appointed Mr.Pradeep N. Kushawar, Architect as a Court Commissioner to visit the suit premises along with the plaintiffs to ascertain the correct and exact area, measurement, boundaries, description and number of the suit premises. The plaintiffs were permitted to take photographs of the suit premises with the help of photographer at the time of the inspection. The Court Commissioner was directed to complete the inspection and submit his report within three months of receipt of the Writ of the order. The Commissioner was to fix the date and time of the inspection of the suit premise and inform the defendants and their Advocates before inspecting the suit premises.

3. In support of this Petition, Mr. Redekar invited my attention to the cause title of the plaint and the cause title of application exhibit-20. He also invited my attention to paragraphs 3, 7 and 10 of the reply filed opposing the application exhibit-20. In short, he submitted that application exhibit-20 is filed by persons other than the plaintiffs, and therefore, the learned trial Judge was not justified in allowing the application. He submitted that the learned trial judge has not dealt with this contention as well. He further submitted that the issues are framed on 16.06.2017 and the application exhibit-20 is filed on 06.02.2018. As the application is belatedly filed, the learned trial Judge is not justified in allowing the application.

4. I have considered the submissions advanced by Mr. Redekar. I have also perused the material on record. The Suit is instituted by the plaintiffs, namely, (1) Laxminarayan Ramchandra Bhattad, (2) Harikishan Ramchandra Bhattad and (3) M/s. M. B. Development Corporation. Application exhibit-20 is filed by (1) Laxminarayan Ramchandra Bhattad, (2) Harishkumar Ramchandra Bhattad and (3) M/s. M. B. Constructions. A perusal of the cause title of the plaint and application exhibit-20 shows that plaintiff No.1 - Laxminarayan Ramchandra Bhattad is described as partner of M/s. M. B. Development Corporation in the plaint and as partner of M/s. M. B. Constructions in application exhibit-20. Plaintiff No.2 is Harikishan Ramchandra Bhattad and he is shown as partner of M/s. M. B. Development Corporation in the plaint. In the cause title of exhibit-20, applicant No.2 is Harishkumar Ramchandra Bhattad, who is shown as Partner of M/s M. B. Constructions. Plaintiff No.3 is M/s. M.B. Development Corporation in cause title of the plaint. M/s. M. B. Constructions is applicant No.3 in application exhibit-20. Prima facie, in so far as the description of applicant No.2 in application exhibit-20 is concerned, it seems to be a

typographical error. The fact, however, remains that Laxminarayan Ramchandra Bhattad and Harishkumar Ramchandra Bhattad are partners in both the firms, namely M/s. M. B. Development Corporation as also M/s. M. B. Constructions. In view thereof, the contention raised by Mr. Redekar is hyper-technical and I do not find any merit in this submission.

5. In so far as the other contention namely, framing of the issue on 16.06.2017 and filing of the application under Section 28 on 06.02.2018 is concerned, equally, I do not find any merit in this submission. While allowing the application, the learned trial Judge has referred to the decision of this Court in ***Empeegee Portfolio Services Pvt. Ltd. Vs. Sharada Navinchandra Shah***, 2009 (1) Bom.C.R. 579. In view thereof, no case is made out for interfering with the impugned order. Defendants will be at liberty to file objections if they are aggrieved by the report of the Court Commissioner. Subject to this, Petition fails and the same is dismissed. 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 the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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