

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4453 OF 2017

Hariom s/o Satyanarayan Shahu, Nandanwan Layout, Jagnade Chowk, Nagpur

-vs-

Pramila w/o Manoharrao Burbure, Nandanwan Layout, Jagnade Chowk, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. M. Nafde, Advocate for petitioner.

Shri S. R. Charpe, Advocate for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : November 13, 2019

Challenge raised in the present writ petition is to the order appointing a Court Commissioner for the purposes of local inspection and submitting a report.

2. The respondent is a landlady who has filed a suit for eviction of the petitioner on account of the petitioner being in arrears of rent and as she was in bonafide need of the suit premises. During pendency of the suit she moved an application below Exhibit-72 seeking appointment of a Commissioner by pleading that it was noticed that the petitioner was undertaking some construction in the tenanted premises. The application was opposed by the petitioner and the trial Court by the impugned order observed that since there were photographs on record to indicate some activity of

construction/alteration going on it, was directed that the Court Commissioner was liable to be appointed. Being aggrieved that order has been challenged in the present writ petition.

3. Shri S. M. Nafde, learned counsel for the petitioner submits that since eviction was sought only on the ground of the tenant being in arrears of rent and the petitioner's bonafide need, there was no justification on the part of the trial Court in directing appointment of Court Commissioner. He referred to the plaint to indicate description of the suit property and submitted that in absence of any reference to any common passage or common toilet, the prayers made in application at Exhibit-72 were incorrect. Moreover in absence of any pleadings in the plaint such request could not have been made. He therefore submitted that the trial Court erred in allowing that application.

4. Shri S. R. Charpe, learned counsel for the respondent on the other hand submitted that under Section 28 of the Maharashtra Rent Control Act, 1999 (for short, the said Act) the landlady had a right to inspect the suit property. Such right could be exercised even by seeking appointment of the Court Commissioner. He relied on the decisions in *Kamlabai Laxman Mutraj vs. Bherumal Verimal Haran 2009*

(2) *Mh.L.J. 213* as well as judgment of the learned Single Judge in Writ Petition No.14746 of 2018 (*Khushroo Rustom Dadyburjor vs. Aspi Jal and anr.*) decided on 04/01/2019. It was thus submitted that the discretion exercised by the trial Court did not warrant interference.

5. On hearing the learned counsel for the parties it is seen that Section 28 of the said Act reserves the right of the landlord to inspect the suit premises that have been let out to a tenant. Such right of inspection can be exercised even by having a Court Commissioner appointed which has been observed by this Court in the aforesaid decision. The trial Court found that there were sufficient pleadings on record to justify appointment of a Court Commissioner. Merely because eviction was sought on the grounds of arrears of rent and bonafide need of the landlady, the same cannot be a reason to reject the prayer that was made in Exhibit-72. I therefore find that the trial Court has rightly allowed the application in question. There is no reason to interfere in writ jurisdiction. The Writ Petition is therefore dismissed with no order as to costs.

JUDGE