

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1595/2019

M/s. Khandelwal Steel and Pipe Distributors

..Vs..

Rajendra S/o Ganpatrai Malhotra through L.Rs. Smt. Prashantla Wd/o
Rajendranath Malhotra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Yash Maheshwari, Advocate h/f Shri S.V. Bhutada, Advocate for the
petitioner.

CORAM : Z.A. HAQ, J.

DATE : 1.3.2019.

Heard.

The defendant / tenant has challenged the order passed by the trial Court by which the application (Exh. No.72) filed by it is dismissed. By the application (Exh. No.72), the defendant prayed that witness No.2 examined on behalf of the defendant be recalled or in the alternative directions be issued to the competent Authority of Slum Department of Nagpur Municipal Corporation to physically inspect the suit property and produce the relevant documents on record of the civil suit. The order passed by the trial Court dismissing the application (Exh. No.72) was challenged by the petitioner / defendant before the District Court in revision under Section 34(4) of the Maharashtra Rent Control Act, 1999. This revision is dismissed and the order passed by the learned District Judge is also challenged in this petition.

According to the petitioner / tenant, the trial

Court should have recalled the witness to enable the defendant to bring on record the evidence that the suit property is situated in slum notified area. It is further submitted that the trial Court has not considered the alternate prayer for directions to the competent authority to physically inspect the suit property and produce relevant documents on record of the civil suit, and has failed to exercise jurisdiction vested in it by Order 26 Rule 9 of the Code of Civil Procedure.

Both these submissions cannot be accepted in the facts of the case. The defendant has examined the officer of Slum Department as its witness No.2 and only because the witness has stated something in the cross-examination which is not to the liking of the defendant, the application (Exh. No.72) came to be filed. The subordinate Courts have rightly recorded that neither Commissioner can be appointed under order 26 Rule 6 of the Code of Civil Procedure nor the witness can be recalled to fill up the lacunae in the evidence. In my view, there is neither any illegality nor error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction. The petitioner has not been able to substantiate the claim for alternate prayer, that the competent Authority be directed to physically inspect the suit property and produce the documents on record. I see no reason to interfere with the impugned order. The writ petition is **dismissed**. No costs.

JUDGE