

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

WRIT PETITION NO. 5230 OF 2019

(KISHOR GHANSHYAM GOUR.....VS.. MRS ALAUKIKA SHRIRANG DEOGADE.)

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

Court's or Judge's orders

Shri Raju Dhoble, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JULY 29, 2019.

Heard.

After recording of cross-examination of the plaintiff, the petitioner (original defendant) filed application (Exh.95) praying that the plaint be returned to the plaintiff. The petitioner/defendant contended that the plaintiff has admitted in her cross-examination that the defendant was inducted as tenant by Shrirang Punaji Deogade and not by the plaintiff, and the plaintiff has not placed documentary evidence on record to show that she is owner of the suit premises and in these facts the civil suit filed by the plaintiff seeking decree for eviction of the defendant will not lie before the Small Causes Court in view of the provisions of Section 23 of the Provincial Small Causes Court Act, 1887. This application is rejected by the learned trial Judge by the impugned order, observing that the point raised by the defendant would be decided at the time of final arguments.

After going through the impugned order, I find that the learned trial Judge has adopted right course and it cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

The learned Advocate appearing for the petitioner submitted that the observations made by the learned trial Judge in paragraph No.6 may adversely affect the adjudication on the point at the stage of final arguments. The apprehension expressed by the learned Advocate for the petitioner is ill-founded. The learned trial Judge has categorically recorded in paragraph No.7 that this point would be adjudicated at the time of final arguments.

In view of the above, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

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