

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

WRIT PETITION NO.5840/2019

Sharad Udaramji Daterao

..Vs..

Prakash S/o Tekchand Pinjani

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

Court's or Judge's orders

Shri J.J. Chandurkar, Advocate for the petitioner.
Shri H.D. Dangre, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 23.8.2019.

Heard.

2] Original defendant / tenant has challenged the order passed by the trial Court by which the application (Exh. No.42) filed by the defendant praying that some pleadings in the plaint and issue No.3 as framed by the trial Court be deleted. According to the defendant, plaintiff has sought damages from the defendant on the ground that the occupation of the suit property by the defendant is illegal. It is argued that as per the provisions of the Maharashtra Rent Control Act, 1999 the occupation of the suit property by the tenant becomes illegal only on passing of decree and, therefore, the pleadings are unnecessary and are required to be deleted.

Learned trial Judge has examined the submissions made on behalf of the defendant and has recorded reasons in paragraph No.4 of the impugned order for rejecting the application (Exh. No.42). I find that the conclusions of learned trial Judge are proper and

does not require any interference by this Court in the extraordinary jurisdiction.

3] Another order passed on application (Exh. No.44) filed by the defendant is challenged in this petition. By this application (Exh. No.44), defendant contended that the plaintiff is seeking eviction of defendant on the ground that the suit premises are required for *bona fide* occupation of plaintiff's son. However, affidavit of plaintiff's son is not filed because of which the defendant is deprived of cross-examining the plaintiff's son on the point of *bona fide* requirement. It is prayed that plaintiff be directed to file affidavit in lieu of examination-in-chief of his son before cross-examination of the plaintiff. This application was filed under Section 151 of the Code of Civil Procedure. In my view, such directions cannot be given to the plaintiff and that too under Section 151 of the Code of Civil Procedure. The petitioner / defendant has not been able to point out any other provision which enables the Court to issue such directions. Hence, it cannot be said that the impugned order suffers from any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE