

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.191 OF 2019

M/s Kishorilal Babulal,
A registered partnership firm,
Through its Partner,
Damodar S/o Mathuraprasad Agarwal,
Age : 72 years, Occu. Business,
R/o New Adarsh Colony, Latur,
District Latur.

... **Petitioner**

Versus

1. Shashikala W/o Ramlal Tiwari,
Age : 65 years, Occu. Household,
R/o Gawali Galli, Near Balaji Mandir,
Latur, District Latur.
2. Sachin S/o Ramlal Tiwari,
Age : 40 years, Occu : Business,
R/o Gawali Galli, Near Balaji Mandir,
Latur, District Latur.
3. Sunil S/o Ramlal Tiwari,
Age 38 years, Occu. Business,
R/o Gawali Galli, Near Balaji Mandir,
Latur, District Latur.
4. Vidya D/o Ramlal Tiwari,
Age : 41 years, Occu. Household,
R/o Gawali Galli, Near Balaji Mandir,
Latur, District Latur.
5. Rakshi D/o Ramlal Tiwari,
Age : 37 years, Occu. Household,
R/o Gawali Galli, Near Balaji Mandir,
Latur, District Latur.

... **Respondents**

...
Ms. Anjali Dube (Bajpai), Advocate for Petitioner.
Mr. S.V.Gundre, Advocate for Respondent Nos.1 to 5.
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CORAM : V. K. JADHAV, J.
DATE : 10.02.2020.

ORAL JUDGMENT :-

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.

2. Petitioner is the original plaintiff. Petitioner has instituted a suit bearing Special Civil Suit No.164 of 2006 for specific performance of agreement and decree of perpetual injunction. The Respondents-Defendants in response to the suit summons appeared in the suit and strongly resisted the suit by filing a written statement. The respondent-defendant No.1 has also filed a counter claim. Pending suit, the petitioner-plaintiff filed an application Exh.59 contending therein that the Civil Court has no jurisdiction to entertain the counter claim as it is barred by the provisions of the Maharashtra Rent Control Act. By order dated 14.09.2011, below Exh.59, the Trial Court has rejected the application Exh.59 by holding that the Civil Court has jurisdiction to

decide the counter claim of defendant No.1 and defendant No.1 was directed to deposit the deficit court fees as per the valuation of the suit property. The respondent-defendant No.1 thereafter filed an application Exh.62 under Order VI Rule 17 of the Civil Procedure Code for carrying out amendment in the written statement/counter claim. The Trial Court by the impugned order dated 31.01.2012 below Exh.62 allowed the said application. The petitioner-plaintiff has filed an application Exh.233 under Order VII Rule 11(b) read with Section 151 of the Civil Procedure Code for rejection of the counter claim and the Trial Court by the impugned order dated 24.07.2018 below Exh.233 rejected the application. The petitioner-plaintiff has filed application Exh.237 to review the order passed below Exh.237. However, by the impugned order dated 22.10.2018 below Exh.237, the Trial Court has rejected the application. Hence, this Writ Petition.

3. The learned counsel for the petitioner-plaintiff submits that it is the case of the petitioner-plaintiff that the suit property was initially given on rent by the father of defendant No.1 in the year 1960 for the period of 20 years to the plaintiff firm vide Lease Deed registered on 13.10.1960 fixing the rent

@ Rs.2,000/- per annum. On expiry of the said period, the said Lease Deed was renewed by defendant No.1 on 15.10.1980 for the further period of 15 years by fixing the rent @ Rs.10,000/- per month. On 20.10.1995, defendant No.1 had issued a notice to the plaintiff thereby terminating the tenancy of the plaintiff firm. The petitioner-plaintiff has replied to the said notice. In the month of September 2004, defendant No.1 had approached the plaintiff and expressed his desire to sell the suit property which was in possession of the plaintiff firm, as a tenant. The plaintiff firm had agreed to the said proposal in a meeting held on 10.09.2004. In the said meeting, defendant No.1 agreed to sell the suit property to the plaintiff on certain terms and conditions and accordingly the plaintiff firm has paid the amount of Rs.1,00,000/- (Rupees One Lac only) in cash and also paid the amount of Rs.9,00,000/- (Rupees Nine Lacs only) by cheque dated 10.10.2004 drawn on Latur Urban Bank. As per the terms and conditions of the agreement, the plaintiff firm was ready and willing to perform its part of the contract. However, defendant No.1 went on avoiding to execute the sale deed on one or another pretext. The plaintiff has therefore, issued a legal

notice on 27.01.2006. Though defendant No.1, vide his reply dated 03.08.2006, admitted all the terms with respect to the agreement to sale, however, denied the price of the suit property. According to defendant No.1, negotiations with respect to the price of the suit property was finalized to the tune of Rs.2 Crores considering the market price of Rs.2000/- per sq. ft. and not Rs.50,00,000/- as contended by the plaintiff. The petitioner-plaintiff was therefore constrained to institute the special civil suit for specific performance of contract bearing Special Civil Suit No.164 of 2006. The learned counsel submits that defendant No.1, while filing his written statement, has also filed the counter claim in which he claims possession of the suit premises from the plaintiff. The learned counsel submits that when the petitioner-plaintiff had filed an application Exh.59 for return of the counter claim to defendant No.1 for want of jurisdiction, the Trial Court while rejecting the application Exh.59 directed defendant No.1 to make valuation of the counter claim as per the value of the suit property and deposit the deficit court fees as per law. The learned counsel submits that defendant No.1 had thereafter filed an application Exh.62 to get rid of those directions to deposit the deficit court

fees. The Trial Court erroneously allowed the application Exh.62, ignoring the order passed below Exh.59. The petitioner-plaintiff had filed an application Exh.233 for rejection of the plaint by taking recourse to the provisions of Order VII Rule 11(b) read with Section 151 of the Civil Procedure Code. Though the Trial Court has given reference to the order passed below Exh.59, erroneously rejected the application Exh.233. Learned counsel submits that the respondents-defendants cannot blow hot and cold simultaneously. Defendant No.1 has to make the valuation of his counter claim as per the actual monetary value of the suit property. Learned counsel submits that the respondents-defendants are liable to pay the court fees in terms of the provisions of Section 6(iv), (v).

4. The learned counsel for the petitioner, to substantiate her contention, placed reliance in the case of ***Badal M. Mittal and another Vs. Omprakash M. Mittal and others reported in 2017 (6) Bom.C.R. 339.***

5. The learned counsel for the respondents submits that the Trial Court has allowed the application Exh.62 and thereby

defendant No.1 was allowed to amend the valuation clause. The learned counsel submits that in terms of the provisions of Section 6(xii)(d), the court fees has been paid which is sufficient. The learned counsel submits that the Trial Court has rightly rejected the application Exh.233 and also the application Exh.237. There is no substance in this Writ Petition. There is no reason to interfere in the impugned orders. The learned counsel for the respondents placed his reliance on the case of *Prem Ratan Vohra Vs. Lalitkumar Dayalji Kakhani* reported in *AIR 1988 Bom. 264*.

6. On careful perusal of the contents of the written statement, the respondent-defendant No.1 has accepted the agreement of sale except the amount of consideration. It has also been specifically contended that time was agreed to be the essence of the contract. It has been specifically pleaded in the written statement that on 11.09.2004 the plaintiff has paid cash amount of Rs.1,00,000/- and further payment of Rs.9,00,000/- was made through cheque, which was encashed by the defendant. According to the defendant, it was agreed that in case of default on the part of the plaintiff to get executed the sale deed before the Diwali Padvā of 2006, the

entire contract shall automatically stand terminated and in that contingency the plaintiff would restore the vacant possession of the premises to the defendant and the amount of earnest money shall stand forfeited. It has been thus pleaded by way of written statement that the plaintiff has committed default in making payment of the balance earnest amount of Rs.40,00,000/- and therefore, the agreement was not reduced into writing. The plaintiff has committed breach of the agreement.

7. By way of counter claim, it has been contended that the right of the plaintiff as a lessee of the suit property has been terminated by efflux of time and secondly, by the defendant's notice dated 20.10.1995. The rights of the plaintiff under the agreement stand terminated by the reason of his default. So, the plaintiff's possession is now unauthorized. Therefore, the defendant is entitled to claim restoration of the vacant possession of the suit property / premises.

8. In the backdrop of these facts, the petitioner-plaintiff has filed an application Exh.59 for return of the counter claim for want of jurisdiction as the counter claim is barred by the

provisions of the Maharashtra Rent Control Act. On going through the order passed below Exh.59, the Trial Court has observed that the dispute between the tenant and the landlord has to be governed by the provisions of the Maharashtra Rent Control Act and further observed that defendant No.1, in paragraph No.26 of the counter claim has valued the counter claim as per the provisions of the Maharashtra Rent Control Act. However, reading the written statement as a whole, there is a specific pleading by defendant No.1 in paragraph Nos.24 and 25 of the counter claim about the termination of lease and unauthorized possession of the plaintiff. The Trial Court has observed that the counter claim is for the recovery of possession of the property, which is in unauthorized possession of the plaintiff. The Trial Court thus, while disposing of the application Exh.59, directed defendant No.1 to make valuation of the counter claim as per the value of the suit property and deposit the deficit court fees within 14 days from the date of the order. It appears that to give a go by to these directions, respondent-defendant No.1 has filed an application Exh.62 for amendment. The Trial Court by ignoring the order passed below Exh.59 allowed the said application Exh.62 with

the observations that the proposed amendment is formal one touching to the valuation of the counter claim and allowed the application Exh.62.

9. In case of ***Badal M. Mittal and another*** (supra), this Court in paragraph No.6 has made the following observations :

“6. Even otherwise, clause (v) of Section 6 of the Court Fees Act clearly indicates that it applies to all suits for "possession of land, houses and gardens" and in such suits, Court fees are to be paid, and the suits to be valued, on the basis of the value of the subject-matter, namely, the land, house or garden, as the case may be. The source of right claimed for seeking such possession is not material. Such right may be either statutory or contractual or even a common law right. Whatever be the right and howsoever it is sourced, so long as the relief claimed in the suit is 'possession of land, houses or gardens', it is a suit falling within clause (v) of Section 6 of the Court Fees Act. The subject-matter of a suit filed under Section 6 of the Specific Relief Act is not enforcement of statutory right under Section 6 but recovery of possession of immovable property. The basis for claiming such recovery may be Section 6 of the Specific Relief Act. Another way of looking at such a suit is what is indicated by our Court in Shah Ratilal's case (supra). The object of the suit may be the claim, i.e. enforcement of a statutory right under Section 6 of the Act, but the subject of the suit is still the house, i.e. the flat, and the valuation must be on the value of the subject. ”

10. In the instant case, by way of the counter claim the defendant is not seeking recovery of the immovable property

from the tenant and as such, the counter claim is not between the landlord and the tenant. In view of the same, the provisions of section 6(XII) Clause-D are inapplicable. The respondents-defendants are liable to pay the court fees as per the value of the subject matter. The learned Judge of the Trial Court has committed error in allowing the application Exh.62 after the order passed below Exh.59 has attained finality. In view of the same, the impugned orders passed below Exh.233 and 237 also do not stand. Hence, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is hereby allowed in terms of prayer clauses 'C' and 'G'.
- (ii) Writ Petition is accordingly disposed off.
- (iii) Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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vmk/-