

WRIT PETITION NO. 585 OF 2020

....
Mr. A. P. Bhandari, Advocate for petitioners
Mr. S. H. Tripathi, Advocate for respondent No.1
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RESERVED ON : 04th FEBRUARY, 2021
PRONOUNCED ON : 08th FEBRUARY, 2021

. Heard.

2. The challenge in this writ petition is to the order dated 15.11.2019 passed by the Court of Civil Judge, Junior Division, Dharangaon, below application Exh.280 in Regular Civil Suit No.5 of 2008. By the impugned order, the application moved by the petitioners/defendants for framing of issue as regards fixation of standard rent or restoration of original issue No.10, came to be rejected.

3. Shri A. P. Bhandari, learned Advocate for the petitioners/defendants would submit that the suit filed by the plaintiffs is for possession on the ground of default in payment of rent and *bona-fide* requirement. In the written statement, a prayer has been made for fixation of standard rent. It was in the nature of the counter claim. Although the counter claim has been rejected, later on, the learned Judge allowed the petitioners/defendants' application for affixing necessary court fees as regards prayer for fixation of standard rent. As such, the prayer has been revived by the Court. In view of Order 14 Rule 5 of the Code of Civil Procedure, issues may be recast at any time before passing decree. According to the learned Advocate, issue as regards fixation of standard rent needs to be framed as it is a material proposition of fact averred by one party to the suit and denied by the other. He, ultimately, urged for allowing the writ petition.

4. Learned Advocate for respondent/plaintiff No.1 would on the other hand submit that the suit dates back to 1992. Recording of evidence has been over long back. Even the arguments have been advanced. In view of rejection of the counter claim, no issue as

regards fixation of standard rent survives in the suit. Learned Advocate supports the impugned order.

5. It is the suit of the year 1992. The suit is for possession of a tenanted premises on the ground of default and *bona-fide* requirement. On receipt of a notice demanding arrears of rent, the petitioners/defendants did not file application for fixation of standard rent within a period of one month from the date of receipt of the notice. It may be mentioned that the suit is governed by the provisions of old Rent Act. The petitioners/defendants in their written statement urged for fixation of standard rent. The trial Court had negated the said claim as has been not maintainable on account of barred by limitation. The said order has attained finality. Later on, the trial Court allowed the petitioners/defendants to affix the court fees as regards prayer for fixation of standard rent. The said order would be of no avail to the petitioners/defendants, since issue arise with a material proposition of fact or law is affirmed by one party and denied by the other. Claim as regards fixation of standard rent is no longer material proposition of fact. The learned Judge, has therefore, rightly rejected the application.

6. I find no jurisdictional error in the impugned order. The writ petition, therefore, fails. The same is dismissed with a request to the trial Court to dispose of the suit within a period of two months from the date of receipt of the copy of this order.

[R. G. AVACHAT, J.]

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