

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

WRIT PETITION NO.8978 OF 2011

SHRIHARI RAMCHANDRA BALDAWA AND ORS ..PETITIONERS

VERSUS

SHAMABAI VISHWANATH PANDE AND ORS ..RESPONDENTS

...

Mr. Rahil Kazi h/f Mr. P. R. Katneshwarkar,
Advocate for the Petitioners.

Mr. Amit S. Deshpande, Advocate for Respondent
Nos.3, 5 to 7.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The present petition is filed against the order framing the issue of tenancy and referring the said issue to the Tenancy Court.

2. The petitioners are original plaintiffs. According to petitioners, respondents/original defendants are in possession on the basis of the agreement to sale. The Suit is filed for possession pursuant to the non-performance of the promise.

3. According to petitioners, there is absolutely no semblance of evidence to suggest that, the present respondents/original defendants were or are tenants over the Suit property. Unless there is some semblance of evidence, the issue

cannot be referred to the Tenancy Court. The learned counsel relies on the judgment of the Division Bench of this Court in case of **Pulmati Shyamlal Mishra and Another Vs. Ramkrishna Gangaprasad Bajpai and Others** reported in 1981 Mah LJ 321 to suggest that, it is the duty of the Court to examine the substance of the case and refuse to frame and remit any issue if the same appears to be demonstrably frivolous and *mala fide*.

4. Mr. Deshpande, learned counsel for original defendants contends that, there is specific pleading in the written statement about the creation of the tenancy and the defendants are in possession on the basis of the tenancy. For framing issue averments in the pleadings are sufficient. No error has been committed by the Trial Court in framing the issue of tenancy and referring the same to the Tenancy Court. Paragraph Nos.14 and 15 of the written statement are specific.

5. I have considered the submissions canvassed by the learned counsel for respective parties.

6. Perusal of the order, it does not transpire that, the Court has considered any document placed by either of the parties on record for referring the issue to the Tenancy Court, nor from the available record before this Court in the writ

petition, such document exists prima facie to observe about the tenancy and necessitating the Court to refer the issue to the Tenancy Court. In the judgment of the Division Bench of this Court in case of **Pulmati Shyamlal Mishra and Another Vs. Ramkrishna Gangaprasad Bajpai and Others** (supra) it is observed that, the process contemplated under order 14 of the Code of Civil Procedure does not contemplate any trial of such issue but it does involve nipping of any such plea in the bud, if the Court, subject to any contrary decision in appeal and revision, judicially concludes against its framing and raising. This is implicit in the separate provision for framing issues and the trial thereof. The Court has duty to examine the substance.

7. The order does not depict the examination of such fact before referring issue to the Tenancy Court.

8. In the result, I pass the following order:

ORDER

A. The impugned order below Exhibit-25 in RCS No.257/2004 is quashed and set aside.

B. The issue it appears is already framed at Exhibit-21/B Serial No.6. The Court shall examine the substance of defence of the defendants regarding the issue of tenancy and

if any document is produced thereto, shall examine the same prima facie and if it appears that, the prima facie case exists may thereafter pass appropriate orders afresh with regard to referring the issue to the Tenancy Court or otherwise.

9. Writ Petition accordingly disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-2022