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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6116 OF 2022**

M/S. INDERLOK INFRA-AGRO PVT. LTD.PETITIONER

V/s.

SANGITA CHANDRASHEKHAR MOJARRESPONDENT

**AND
CIVIL WRIT PETITION NO. 6117 OF 2022**

M/S. INDERLOK INFRA-AGRO PVT. LTD.PETITIONER

V/s.

SUBHASH SHAMRAO MOJARRESPONDENT

Ms. Priti S. Shah Advocate for the Petitioner in both Petitions

Ms. Vijayanti R. Kalekar Advocate for the Respondent in both
Petitions

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 13, 2022.

P.C.:

1) The issue involved in both these Petitions so also Petitioner are common, by consent of the parties heard and decided together by this common order.

2) Both these Petitions are directed against the order impugned

dated 24/02/2022 whereby prayer of the Petitioner-Plaintiff who is appellant before Appellate Court, for inspection of Suit premises came to be rejected.

3) Petitioner initiated R.A.E. & R. Suit No. 700/1228/2008 and 701/1229/2008 for recovery of possession of the Suit properties. Possession is sought under Section 16 of the Maharashtra Rent Control Act (Hereinafter referred to as 'the Act' for the sake of brevity) on the ground of carrying out addition and alterations, permanent in nature to the Suit premises. Both Suits came to be dismissed vide Judgment and Order dated 12/10/2012,

4) Feeling aggrieved, original Plaintiff preferred (A-1) Appeal No. 4/2013 and 5/2013. In both these Appeals by Plaintiff-landlord, Application Exh. 21 are taken out with a prayer for issuance of directions to the Respondent-Defendant to give inspection of the Suit premises which was rejected vide order impugned dated 24/02/2022. As such, these Petitions.

5) The contentions of counsel for the Petitioner are, grant of inspection of the Suit premises is a statutory right vested in the Petitioner-landlord under Section 28 of the Act r/w Order XXVI Rule

9 of Code of Civil Procedure, 1908. Such right can be exercised by either appointing Court Commissioner or by permitting the Petitioner to have such inspection. Such right can be exercised by the Petitioner-landlord at any stage of the proceedings. Even if the Suit of the Petitioner is dismissed, provisions of Section 28 of the Act are available at appellate stage and that being so, Court below committed an error in rejecting the prayer.

6) Counsel for Respondent would urge that prayer of the Petitioner is rightly rejected by the Appellate Court as the Petitioner has sought possession of the Suit premises on such grounds wherein aforesaid fact was relevant to be established by bringing on record sufficient evidence. While dismissing the Suit of the Petitioner, Trial Court has observed that Petitioner has failed to discharge burden by bringing on record sufficient evidence which lacuna Petitioner-Plaintiff intend to cover by taking recourse to the present proceedings which is not permissible in law. In any case, it is claimed that at appellate stage, Petitioner cannot claim the relief of inspection which was rightly rejected by the Trial Court.

7) I have appreciated said submissions.

8) The fact that Suit of the Petitioner-Plaintiff was dismissed and Appeal questioning such dismissal is pending adjudication is not a disputed fact. Provisions of Section 28 of the Act provides for inspection of the premises. From the language of said section, it can be inferred that said provision has to be read to the benefit of the landlord i.e. Plaintiff herein as it starts with wordings shall be entitled to inspect the premises. The only rider provided in the said provision is, giving prior notice to the tenant, licensee or occupier of the intention of landlord to inspect the premises.

9) As such, the Statute confers right of having inspection of the Suit premises to the Plaintiff-Petitioner (landlord) and the rider while exercising such right i.e. issuance of prior notice appears to have been already complied with in the case in hand.

10) Inspection of premises includes detailed inspection including that of inspection alongwith person having expertise knowledge about the structure viz. architect, structural engineer etc. As such, inspection can be carried out with such expert persons viz. architect, structural engineer etc and such critical inspection is permissible. So as to substantiate the aforesaid claim, support can be drawn from

the Judgment of this Court in the matter of **Empeegee Portfolio Services Pvt. Ltd. Vs. Mrs. Navinchandra Shah**¹.

11) Aforesaid provision is general in nature and landlord as such can on his own ask for such inspection after giving notice for having inspection with the person having expertise knowledge. Said provision does not cast an embargo on the right of the landlord as is observed viz. giving details of alteration. Such right of landlord can not be restricted to the stages viz. before filing of the Suit, during pendency of the Suit or during pendency of the Appeal. The language employed in Section 28 does not put an embargo on the right of the Petitioner-landlord to whose benefit such provision is incorporated in the Statute. It is open for such person to take recourse to the same at any stage. It will be violence to the Section if same is interpreted to mean that the provision is not available during pendency of the proceedings before the Court as is claimed by the Respondent. This Court is required to be sensitive to the principle of law that Appeal is a continuation of the Suit. The provision as such can be even taken recourse during pendency of the Suit so also Appeal.

¹ 2009(2) AIR BOM R 394

12) Material collected in the form of expertise report or such other documentary evidence whether can be used and accepted during pendency of the Suit or Appeal will be an independent issue. Same can be independently considered by the concerned Court on its own merit in accordance with law at an appropriate stage of the proceedings. However, just because inspection is asked during pendency of the Suit or during pendency of the Appeal does not *ifso facto* attract an embargo on the right of the Petitioner-landlord to seek remedy under Section 28 of the Act.

13) In the aforesaid background, in my opinion, orders impugned passed by the Appellate Court ignoring the mandate and object of Section 28 of the Act are not sustainable.

14) As a consequence of above, orders impugned dated 24/02/2022 passed below Exh. 21 in (A-1) Appeal Nos. 4/2013 and 5/2013 are hereby quashed and set aside. Applications Exh. 21 stand allowed.

15) Petitions stand allowed in the above terms.

16) Appellate Court is directed to fix the date of inspection.

[NITIN W. SAMBRE, J.]