

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4944 OF 2022

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Mr. Dilip Shankar Kumar

..Petitioner

Versus

Mr. Kamlesh Dilip Salunke and Ors.

..Respondents

Mr. Girish B. Badiger, for the Petitioner.

Mr. Rakesh Patil, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd APRIL, 2022

PC.

1. The respondent – Kamlesh Dilip Salunke initiated RCS No.204 of 2014 based on title for possession, recovery of rent from defendant No.1 and damages. The claim in the suit was that the original defendant No.1 has permitted the petitioner/defendant No.2 to use the suit premises.

2. In the aforesaid background, plaintiff took out application Exh.174 pursuant to the provisions of Order XVIII Rule 1 of the CPC for issuance of directions to the petitioner/defendant No.2 to open his evidence. The same is granted by the Trial Court vide order passed on 3rd January, 2020.

3. Contentions of learned counsel for the petitioner/defendant No.2 are, considering the nature of pleadings in the

plaint and issues, it is for the respondent/plaintiff to open the evidence in view of provisions of Order XVIII Rule 1 of the CPC. According to him, it is for the plaintiff to open the suit. That being so, plaintiff must lead evidence once trial commences. According to exception carved out, order impugned appears to be contrary to the provisions of Order XVIII Rule 1 of the CPC. That being so, the order impugned is not sustainable.

4. Counsel for the respondent/plaintiff supports the order impugned.

5. Perused the rival pleadings.

6. Petitioner/defendant No.2 resisted the suit claim by filing written statement and counterclaim. In counterclaim, it is the prayer of the petitioner that he be declared as tenant of the suit premises. He has also sought injunction against the respondent/plaintiff not to disturb his possession over the suit property being a tenant. As a consequence of above, prayer made is indirectly admitted ownership of the respondent/plaintiff over the suit property.

7. That being so, the claim put forth by the respondent/plaintiff that the exception be carved out under Order XVIII Rule 1 of the CPC appears to be quite justified. The Court below appears to be supported by the provisions of Sections 101

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and 102 of the Evidence Act, so as to form an opinion that the burden is casted on the petitioner to prove that he was inducted as tenant by late Tukaram Dattatray Salunke, a co-owner. That being so, the order impugned appears to be quite justified. No case for interference in the order impugned is called for.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]