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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9399 OF 2023

Shaikh Salim Shaikh Mohammad

PETITIONER

VERSUS

Chetan Jankiram Borole (Died) LRs and Others RESPONDENTS

.....
Mr. Swapnil Joshi for J. P. Legal Associates for the petitioner
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st AUGUST, 2023

ORDER :

1. Leaver to correct prayer clause.
2. The petitioner is aggrieved by order dated 7th June, 2023 passed by learned Civil Judge, Senior Division, Bhusawal below Exhibit-112 in Special Civil Suit No. 24 of 2014, thereby allowing the application filed by the respondents – defendants No.2 and 3 for paying court fee of Rs.36030/-, for possession of the ground floor of the suit property.
3. The suit is filed by the petitioner – plaintiff for specific performance. In the suit, defendants No.1 and 2 appeared and filed their written statement contending that the agreement to sale, specific performance of which is sought by the plaintiff, is

not signed by them and possession of the ground floor of the suit property was never given to the plaintiff. They have not accepted the amounts mentioned in the agreement. The agreement does not contain recital about handing over of the possession. They, therefore, claimed that the possession of the plaintiff of ground floor of the suit property is illegal and he has illegally leased out the said ground floor. They further claimed that the transaction alleged by the plaintiff is not sale transaction, but it is a money lending transaction. They, therefore, claimed that they may be given possession of the ground floor of the suit property.

4. Since the above prayer is made in the written statement, defendants No.1 and 2 filed application Exhibit-122, seeking permission to deposit Court fee of Rs.36030/-, as they have claimed possession of the ground floor of the suit property. The said application is allowed by the Trial Court. The plaintiff has challenged the said order in this petition.

5. Heard learned advocate for the petitioner. Perused the memo of writ petition, documents annexed along with it and the impugned order.

6. In the written statement, the defendants have claimed

possession of the ground floor of the suit property from the plaintiff. I do not agree with the submission of the learned advocate for the petitioner that counter claim is not in conformity with the Rule 6-A of Order 8 of the Civil Procedure Code. No prejudice is caused to the petitioner, by the order impugned in the present petition. No case is made out by the petitioner to cause interference in the impugned order in exercise of extraordinary writ jurisdiction.

7. Writ petition, being devoid of merit is dismissed with liberty to the petitioner to challenge the maintainability of the counter claim, during the course hearing of the suit.

[NITIN B. SURYAWANSHI]
JUDGE