

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

WRIT PETITION NO.981 OF 2023

**SHOBHANABAI ASHOK DESHMUKH THROUGH HER GENERAL
POWER OF ATTORNEY HOLDER SHUBHAM SANJAY DESHMUKH
VERSUS
HEMANT VITTHAL WANI**

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Advocate for Petitioner : Mr. Girish S. Rane

Advocate for Respondent : Mr. P. H. Patil

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17TH APRIL, 2023

PER COURT :

1. Petitioner has challenged the order dated 10/02/2022, passed by learned Joint Civil Judge, Junior Division, Amalner, below Exhibit-16 in Regular Civil Suit No.105/2014, thereby rejecting application filed by petitioner for appointment of Court Commissioner for inspection of the suit property.

2. Petitioner/original plaintiff has filed suit for recovery of possession under Sections 15 and 16 of the Maharashtra Rent Control Act, contending that defendant has constructed on the rented premises, without permission of the plaintiff and defendant has changed nature of the rented premises. In the suit, application Exhibit-16 is filed for appointment of Court Commissioner, so as to ascertain the construction made by defendant on the suit property. The said application is rejected by the trial Court holding that

burdan is on the plaintiff to prove that defendant has carried out construction in the suit premises.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the grounds raised in the petition, annexures thereto and the impugned order.

4. Trial Court while rejecting the application has failed to consider provisions under Section 28 of the Maharashtra Rent Control Act. Learned advocate for petitioner is justified in relying on the decision of learned Single Judge of this Court in ***Kamlabai Laxman Mutraj Vs. Bherumal Verimal Haran, 2009(2) Mh.L.J. 213***, Writ Petition No.632/2016 (Pritpalsingh Rajendrasingh Bagga Vs. Chudaman Shrawan Chaudhari), Writ Petition No.14746/2018 (Khushroo Rustom Dadyburjor Vs. Aspi Jal and Another) and in Writ Petition No.4453/2017 (Hariom Satyanarayan Shahu Vs. Pramila Manoharrao Burbure), wherein this Court has consistently held that in view of Section 28 of the Maharashtra Rent Control Act, landlord can take inspection of his property which is let out by him on license, at a reasonable time, after giving prior notice to the tenant or licensee and in view of the said provision, appointment of Court Commissioner can be made.

5. It is not in dispute that present application is moved by the plaintiff for appointment of Court Commissioner, which is

opposed by the defendant by filing detail say at Exhibit-19. In that view of the matter, it can be held that notice was given to the defendant. Considering the ratio in aforesaid decisions, writ petition deserves to be allowed.

6. Writ petition is, therefore, allowed in terms of prayer clause 'A' and 'B'.

(NITIN B. SURYAWANSHI, J.)