

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

WRIT PETITION NO. 7050 OF 2023

Shri. Ashok Mahipati Dalavi

...Petitioner

Versus

Aarya Kshatriya Samaj, Kolhapur
through Trustees

...Respondent

Mr. Sandeep Koregave, for the Petitioner.

CORAM : MADHAV J. JAMDAR, J.

DATED : 13th JUNE 2023

P.C. :

1. Heard Mr. Sandeep Koregave, learned counsel appearing for the Petitioner.
2. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality of common order dated 3rd December 2022 passed by the learned 2nd Joint Civil Judge, Senior Division, Kolhapur in Regular Darkhast No. 55 of 2014 below Exhibits 1, 124, 129, 136 and 138. By the impugned order, the said applications below Exhibits 124, 129 and 138 were

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rejected.

3. The application at Exhibit-136 was filed by one Advocate Motikumar Madhavrao Budhale, who was the trustee. In said Exhibit 136 application, inter alia it was the contention of said Advocate Budhale that, as there was no change report when the suit was filed showing his name as trustee, the suit could not have been filed. However, said application at Exhibit 136 was dismissed and the said Advocate Budhale has not challenged the said order.

4. As far as the impugned order regarding rejection of Exhibits 124, 129 and 138 is concerned, it is the contention of Mr. Koregave, learned counsel appearing for the Petitioner that the trustees who filed the suit were not entitled to represent the trust. He further submitted that the Respondents i.e. decree holders/landlords have given concession to other tenants in payment of rent, however, the said concession was not given to the present Petitioner.

5. A perusal of the Judgment and Decree passed by the learned 3rd Joint Civil Judge, Senior Division, Kolhapur in Regular Civil Suit No. 4 of 1998 which has been filed by the trust through its trustees, shows that the suit was filed under the provisions of the Bombay Rents, Hotel

and Lodging House Rates Control Act, 1947 (hereinafter referred to as “**the said Act**”) for eviction on the ground of arrears of rent. The said suit was decreed by Judgment and Decree dated 13th August 2008. It further appears that the issue whether the Respondents i.e. Plaintiffs-trust proved that it is entitled to take possession from the Defendant has been specifically framed by the Trial Court and the same was answered in favour of the Defendant. Mr. Koregave, learned counsel appearing for the Petitioner fairly pointed out that the said Judgment and Decree of the learned Trial Court was confirmed by the Appeal Court, High Court and ultimately by the Supreme Court. In any case, these contentions can’t be raised in the Execution Petition and these contentions are specifically raised and rejected by the learned Trial Court, which decree has attained finality and has confirmed upto the Supreme Court.

6. As far as the contention regarding the concession in rent given to other tenants and the same was not given to the Petitioner is also outside the scope of Darkhast proceedings. The contentions sought to be raised by the Petitioner in the Darkhast proceedings were available to the Petitioner for raising it during the trial. It appears that certain

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contentions were raised which are similar in nature to the contentions raised by the Petitioner in trial and same were rejected.

7. Therefore, there is no substance in the Writ Petition. The Writ Petition is dismissed, however with no order as to costs.

[MADHAV J. JAMDAR, J.]