

Nikita

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

WRIT PETITION NO.13514 OF 2023

Pandhari Motilal Yadav

... Petitioner

V/s.

Datta Baburao Dhanavade and Ors.

... Respondents

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Date: 2023.11.03
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Mr. Bhavesh Joshi i/b Mr. B.P. Shukla for the Petitioner.

Mr. Vinod L. Desai for Respondent No.2 to 4.

Mr. S. A. Rajeshirke for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 3, 2023

P.C.:

1. By the impugned order, Trial Court has rejected the petitioner's application under Order 1 Rule 10 of Code of Civil Procedure, 1908.

2. According to the petitioner, he claims to be tenant in relation to Room No.1, Shed No.8S admeasuring 10' X 17' which described in paragraph No.1 of the suit premises. The respondent No.1 filed S.C. Suit No.340 of 2019 seeking relief of specific performance for enforcement of agreement of permanent alternative accommodation dated 22nd November 2012 executed by defendants in favour of plaintiffs. Petitioner claims to be tenant in the suit premises.

3. The Trial Court rejected plaintiff's application holding that the petitioner had filed L.C. Suit No.2749 of 2009 challenging notice under Section 351 of Mumbai Municipal Corporation Act, 1888, where subject matter of notice was Room No.1 Shed No.8S which is suit premises. The Trial Court dismissed the petitioners suit holding that the suit premises is unauthorized construction. With the result, petitioner is not entitled to claim any substantive right in relation to a structure which is declared as unauthorized construction and such declaration has attained finality up to the Supreme Court.

4. Hence there is no error of jurisdiction committed by the Trial Court while rejecting the application of the petitioner. There is no merit in the petition.

5. The writ petition stands dismissed. No costs.

6. The observations made in the order are confined to the adjudication under Order 1 Rule 10 of the Code of Civil Procedure, 1908 and shall not influence the Trial Court where substantive proceedings are pending between the parties.

(AMIT BORKAR, J.)