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

CIVIL REVISION APPLICATION NO.364 OF 2023

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Mahanaaz Roozbeh Aga

... Applicant

V/s.

Mohd. Asgarali Moinuddin
Shaikh & Ors.

... Respondent

Mr. V.Y. Sanglikar for the applicant.

Mr. Ram Upadhyay with Mr. Anul Pande i/by Law
Competere Consultus for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

PC.:

- 1.** The challenge in this civil revision application under Section 115 of the Code of Civil Procedure, 1908 ("CPC" for short) is to the order dated 14 February 2023 rejecting notice of motion taken out by the defendant under clause (d) of Order 7 Rule 11 of the CPC.
- 2.** According to the applicant, the suit is filed by the respondents for enforcement of their right as a tenant and also enforcing right conferred under the provisions of the Maharashtra Rent Control Act, 1999.
- 3.** According to the plaintiffs, till the landlady transfers tenancy rights in favour of the plaintiffs, he cannot claim tenancy right over

the suit property. According to him, the suit is filed for enforcement of his civil right/possessory right over the suit property and claim of injunction needs to be decided based on civil rights of the plaintiffs. Learned advocate for plaintiff submits that plaintiff is not claiming tenancy rights in the present suit.

4. On meaningful reading of the plaint, it appears that though in paragraph 1 of the plaint the plaintiffs claim that they acquired tenancy right in respect of the suit property; however, rest of the plaint in its entirety proceeds on the basis that defendant Nos.1 to 4 who are tenants in the suit property have transferred their rights in favour of the plaintiff and despite oral assurance by the landlady, she has not transferred tenancy right in favour of the plaintiff. Therefore, on reading of the plaint as a whole it appears that the plaintiff is seeking enforcement of his civil rights/possessory right to claim relief of injunction against the defendants. In paragraph 20, the plaintiff has specifically stated that the plaintiff is in peaceful possession of the suit property which indicates that the suit is based on possessory right and not as a tenant of the suit property. Therefore, it is for the Civil Court to consider relief of injunction as sought by the plaintiff.

5. For the reasons stated above, I am satisfied that there is no legal infirmity in the impugned order.

6. The civil revision application stands rejected. No costs.

(AMIT BORKAR, J.)