

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14730 OF 2022**

Robert Slyvester Mendosa)
Aged : 62 years, Occu.:Business,)
carrying on Business in the name and)
style of Theeram Restaurant having)
address at Shop No.4, Ismail Karim)
Battliwala Chawl, 101, Church Road,)
Jambhli Pada, Kunchi Kurve Nagar,)
Kalina, Santacruz (East),)
Mumbai-400 029.)Petitioner

Versus

1. Shabnam Anwarali Battliwala)
Aged 70 years, Occu: Housewife,)
2. Munis Anwarali Battliwala,)
Aged 46 years, Occu: Not Known,)
3. Allam Anwarali Battliwala,)
Aged 38 years, Occu : Not Known,)
Nos.1 to 3 above having their)
residential address at Pioneer)
Heritage Residency-II, A Wing,)
Flat No.406, Linking Road Extension,)
Santacruz (West), Mumbai – 400 054.)Respondents

Ms. Jennifer Michael along with Mr. Som Sinha and Ms. Divya Vishwanath, Advocates for the Petitioner.

Mr. Nitin Parakhe, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

Judgment:

1. Rule. Rule made returnable forthwith. By consent of the parties, the matter is heard finally.

2. By this petition, the petitioner has impugned the order passed by the Trial Court of Small Causes Court below Exhibit "19" whereby the revisional court has dismissed the order challenged by the petitioner.

3. It is contention of learned counsel for the petitioner that the trial court had allowed the application filed by respondents below Exhibit "19" and directed the petitioner to permit the respondents to take inspection of the suit premises along with their architect and photographer. Learned counsel further submits that as per Section 28 of the Maharashtra Rent Control Act (for short "the Rent Act"), a notice ought to have been given to the tenant before taking

inspection but the said notice was not given to the petitioner by respondents but this fact is not considered by the trial court and thereafter the revisional court. Learned counsel further submits that the revisional court has rejected the application without considering the facts and only on technical ground, which is improper. Hence requested to allow the writ petition or in the alternative, remand the matter to revisional court to decide the application freshly.

4. Learned counsel for the respondents submits that the trial court has passed the order after considering all the aspects. It is the right of the landlord to take inspection of the property, on that basis, the application was allowed by the trial court and, thereafter, the revisional court has confirmed the said decision, which is proper. He relied on **Suresh Manoharlal Jumaní and anr. Versus Aasia Management & Consultancy Pvt. Ltd. 2013(6)ALL MR 117.**

5. I have heard both learned counsel, perused the order passed by the revisional court below Exhibit 19.

6. While allowing the application filed by respondents, the trial court has observed that being landlord and as per Section 28 of

the Rent Act, respondent has right to take inspection of suit premises and no right of the defendant would be prejudiced, on that basis, the application was partly allowed. The plaintiff/respondent is permitted to take inspection of the suit property along with the architect and photographer. The petitioner challenged the said order before the revisional court. The revisional court has observed that the order passed for inspection is not revisable, it is only procedural order for inspection and does not affect the substantive right of the present petitioner and, on that basis, revision was dismissed.

7. Section 28 of the Maharashtra Rent Control Act states about inspection of premises. It reads as under :

"The landlord shall be entitled to inspect the premises let or given on license at a reasonable time after giving prior notice to the defendant, licensee or occupier."

This section states about giving notice to the tenant.

8. In the present case, landlord has filed a suit against the tenant for eviction, that suit is pending before the trial court. The application under Section 28 of the Rent Act filed by respondent is at

Exhibit "E" of the petition. In this application, in paragraph 3, respondent has stated that the applicant does not want to visit the suit premises with an architect without the order of this Court to avoid unnecessary police complaint and allegations on the applicant. In my view, as the suit was pending before the trial court, hence, respondents had not given notice as mentioned in Section 28 of the Rent Act but had filed an application before trial court. The petitioner had filed a reply to this application. After hearing both sides, the trial court has passed a reasoned order. Thereafter, the revisional court has confirmed the said order. I do not find any infirmity in it as the landlord has a right to take inspection of the suit premises. If the architect takes measurement of the suit premises, the petitioner has a right to cross examine the said witness after filing the evidence of the said witness.

9. In view of above, I pass following order :

1. Writ Petition is dismissed. No order as to costs.

10. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)