



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

**WRIT PETITION NO.14669 OF 2022
WITH
INTERIM APPLICATION NO.19845 OF 2022
IN
WRIT PETITION NO.14669 OF 2022**

Smt. Janabai Bapu (deceased)
Keshav Baburao Hajare through
his CA Narayan Ramchandra
Patekar

...Petitioner

Versus

M/s. Raibow Real Estates Pvt. Ltd.

...Respondent

...

Mr. Onkar Gupte for the Petitioner.

Mr. Viral Thaker i/b. M/s. L.J. Law for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th OCTOBER, 2023.

P.C.:-

1. The Petitioner herein impugns order dated 27/07/2022 whereby the Appellate Bench of the Small Causes Court, Mumbai dismissed the application filed by the Petitioner under Order 41 Rule 25 of the CPC.

2. Heard Mr. Onkar Gupte, learned counsel for the Petitioner and Mr. Viral Thaker, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel

for the respective parties.

3. The Petitioner has challenged the eviction decree in Appeal No.42 of 2015. The Petitioner filed an application before the Appellate Court under Order 41 Rule 25 of the CPC to frame an issue relating to the maintainability of the suit stating that the property wherein the premises are situated was declared as slum and no prior permission was sought under Section 22 of the Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act, 1971. The Appellant therefore questioned the maintainability of the Suit and by the said application under Order 41 Rule 25 urged to frame the issue of maintainability of the Suit. The learned Judge dismissed the application mainly on the ground that the counsel for the Appellant had conceded that no specific plea was raised before the Trial Court regarding maintainability of the suit. Hence, this petition under Article 227 of the Constitution of India.

4. It may be mentioned that Order 41 Rule 25 of the CPC enables the Appellate Court to frame an issue where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which is essential to the right decision of the suit upon the merits. Order 14 Rule 1 postulates that issue arises

when a material proposition of fact or law is affirmed by one party and denied by the other. Rule 2 of Order 14 stipulates that material propositions are those propositions of law or fact, which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

5. It is not in dispute that the Petitioner has not raised the defence that the property was declared as 'slum' and the suit was not maintainable for want of prior permission under Section 22 of the Maharashtra Slums Act. In the absence of such pleadings there was no scope for the Appellate Court to frame such issue under Order 41 Rule 25 of the CPC and there was no omission on the part of the Trial Court to frame the issue. Hence, the Petition is dismissed.

6. Interim application does not survive in view of disposal of the writ petition.

(SMT. ANUJA PRABHUDESSAI, J.)