

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 11 OF 2022

Laxmikant Jaikisanji Laddha__ Vs. __ Rangnath Shriranjgi Chandak

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.T.Gilda, Senior Advocate assisted by Mr. A.J.Gilda, Advocate for the applicant
Mr. J.J.Chandurkar, Advocate for non-applicant

CORAM : AVINASH G. GHAROTE, J.
DATE : 30/06/2023

1] Heard Mr. Gilda, learned senior counsel for the applicant and Mr. Chandurkar, learned counsel for the non-applicant.

2] The revision challenges the order dated 9.12.2021 passed below Exh.27 on the application under Order 7 Rule 11 of the CPC, on the ground that the suit was not maintainable in view of the provisions of Section 8(4) of the MRC Act, considering the language of the same and therefore was one which was liable to be rejected.

3] Mr Gilda, learned senior counsel states that since the plaint has been instituted under Section 8(4) of the MRC Act, the basic requirement as is spelt out from the requirement of Section 8(4) of the Act is that a plea for a

standard rent can be raised only in a suit for recovery of rent. Thus the existence of a suit for recovery of rent would be a *sine qua non* for entertaining a plea for fixation of standard rent, in absence of which the suit itself would not be maintainable under Section 8(4) of the Act, which would indicate the absence of a right to sue and therefore, resulting in the absence of cause of action as contemplated under Order 7 Rule 11(a) of the CPC and therefore, the plaint is liable to be rejected. Reliance is placed upon **Colonel Shrawan Kumar Jaipuriyar vrs. Krishna Nandan Singh and anr, (2020) 16 SCC 594.**

4] Mr. Chandurkar, learned counsel for the non-applicant/plaintiff contends that though the plaint in so many words may not claim a decree for standard rent, but in sum and substance it does so and therefore, the legal right to sue can be related to Section 8(1) of the MRC Act, in view of which the impugned order is required to be sustained.

5] Before going ahead, it is necessary to note what the Hon'ble Apex Court has held in **Colonel Shrawan Kumar Jaipuriyar** (supra), in

which while considering a claim for pre-emption, in absence of any statutory right in that regard, the Hon'ble Apex Court has held as under:

“(8) In the aforesaid background, it is to be held that the plaint does not disclose any cause of action for the relief prayed, that is, a direction to the second respondent to execute and register a sale deed in favour of the first respondent and to put the first respondent in possession. There does not exist any legal right which the plaintiff or the first respondent is entitled to invoke and enforce. For a right to exist, there must be a correlative duty which can be enforced in a law suit. A right cannot exist without an enforceable duty. Ownership means a bundle of rights which would normally include the right to exclude and transfer the property in a manner one wants, subject to contractual obligations as agreed or statutory restrictions imposed on the owner. In the present case, the pleadings fail to establish violation of a statutory right or breach of a contractual obligation which creates an enforceable right in the court of

law. In the absence of any such right or even a claim, the plaint would not disclose cause of action.”

6] Section 8(4)(a) of the MRC Act permits the Court to fix the standard rent, however, such standard rent is necessary to be fixed in a suit for recovery of rent. In the instant case, a reading of the plaint would demonstrate that it is not a suit for recovery of rent, but merely one under Section 8(4) of the Act. That apart, it does not seek a declaration for fixing the standard rent.

7] That being the position, it would clearly be apparent that the legal right to claim such a declaration vis-a-vis the language of Section 8(4)(a) of the MRC Act is not available to the non-applicant/plaintiff, as a result of which it can clearly be seen that there is no cause of action accruing favour of the non-applicant/plaintiff. That being the position, the impugned order cannot be sustained. The same is hereby quashed and set aside and the plaint is rejected under Order 7 Rule 11(a) of CPC.

8] Needless to mention this will not prevent the non-applicant/plaintiff from approaching the learned Court with a proper plaint invoking the appropriate provision of the MRC Act.

9] Revision application is allowed in above terms. No costs.

JUDGE

Rvjalit