



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

11 WRIT PETITION NO. 9377 OF 2024

**RAHUL PURUSHOTTAM GARDE
VERSUS
MAYUR DILIP KULTHE AND OTHERS**

...
Advocate for the Petitioner : Mr. Madhav N. Kalgane
h/f. Mr. Rajale Gulab B.
...

**CORAM : R. M. JOSHI, J.
Dated : December 02, 2024**

PER COURT :-

1. This petition takes exception to order dated 01.07.2022 passed below exhibit 5 in RCS No. 252/2022 rejecting exhibit 5 and confirmation of the said order in MCA No. 112/2022.
2. Petitioner is original plaintiff. He files suit with specific contention that he is a tenant in respect of the suit property and interim possession thereof. An apprehension is raised by the petitioner/plaintiff that he is likely to be dispossessed from the suit property by demolition thereof.
3. Defendants / respondents owners of the suit property denied relationship of tenant and landlord. A dispute is also raised with regard to the possession of the plaintiff over the suit property.
4. In the light of aforesaid facts issue came up before the consideration of the learned Trial Court is as to whether there is, *prima facie*, evidence to indicate that plaintiff is a tenant of the suit property and is in possession thereof. Learned Trial Court recorded finding thereon against plaintiff and rejected exhibit 5.

5. Learned counsel for the petitioner / plaintiff submits that the trial Court has failed to consider the documents placed on record which according to him indicate that the plaintiff is in possession of the suit property and therefore, impugned orders deserve interference and application exhibit 5 in suit be allowed.

6. Once there is a dispute raised by the defendants in respect of status of the plaintiff as a tenant of the suit property as well as possession thereof, *prima facie*, burden is on the plaintiff to prove his contention to that effect.

7. Paragraph no. 13 of the order passed by the learned Trial Court indicates that no evidence was placed before the Trial Court in the form of any rent agreement or rent receipt to show that the plaintiff is tenant of the suit property. In so far as possession of the plaintiff over the suit property is concerned, electricity bill which was sought to be relied upon by the plaintiff does not stand in his own name nor in the name of his ancestors. Even shop at licence placed on record does not show that it pertains to the suit property. Perusal of the said documents placed before the Court shows that the Trial Court committed no error in recording findings against plaintiff.

8. For want of any perversity in the order, no interference is called for in the order of rejection of exhibit filed in RCS No. 252/2022. Similarly, confirmation of the said order in MCA No. 112/2022 passed by the Trial Court is justified. Hence, the petition is dismissed.

(R. M. JOSHI, J.)