

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.567 OF 2022

SHARADA
RANGNATH
WAHULE

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Smt. Krushnabai Dattatray Mote (since
Deceased)

Shri. Vishnu Dattatray Mote

... Applicant

V/s.

Pradeep Anant Deshpande And Ors.

... Respondents

Mr. Jaydeep Deo, Advocate for the Applicant.

Mr. Sachin S. Punde, Advocate for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 21 FEBRUARY 2024

PC.:

1. This Civil Revision Application is filed under section 115 of Civil Procedure Code, by the original landlord, who was the defendant in an declaratory suit filed under the Maharashtra Rent Control Act. The petitioner herein / landlord has preferred an Application under Order 7 Rule 11 of Civil Procedure Code, rejection of the plaint. The said Application preferred by the original landlord was rejected by the Trial Court. The Trial Court have rejected the Application of the landlord on the ground that the question whether the plaintiff in the declaratory suit, are entitled for such a declaration or not is to be decided after considering the evidence on record.

2. The Trial Court further held that unless and until complete evidence on this issue is brought on record, it will be difficult to decide the actual dispute between the parties. It further recorded that if the Application preferred by the landlord under the provisions of Order 7 Rule 11 (a) and (d) of Civil Procedure Code is rejected no real prejudice will be caused to the landlord. Landlord will always have an opportunity to cross examine the plaintiff witness and also lead his evidence in the said declaratory suit.

3. Mr. Deo at this stage submits that the defendant / landlord should be permitted to file written statement within a period of six weeks, since time has been consumed after filing of the Application under Order 7 Rule 11 (a) and (d) of Civil Procedure Code.

4. Mr. Sachin Punde appearing for the Respondent (original plaintiff) on instructions of his client submits that he has no objection if the landlord / defendant is granted six weeks time to file written statement. He submits that there should be a condition precedent if the written statement could not be filed within six weeks. The said opportunity granted to the defendant to stand rejected.

5. I have gone through the impugned judgment and the documents on record.

6. The case of the plaintiff in the declaratory suit is that the plaintiff be declared as a tenant of the suit premises. A paragraph no.2 of the plaint the plaintiff has elaborately mentioned of the role of plaintiff nos.1, 2 and 3. I do not find any infirmity in the

impugned judgment recorded by the Trial Court as the Trial Court has come to finding that evidence is required be led by the parties in the declaratory suit and the issue can't be decided under the provisions of Order 7 Rule 11(a) and (d) of the Civil Procedure Code. If the person wants to seek a declaration that he is a tenant under the Maharashtra Rent Control Act, the said declaration can be sought only by way of filing a suit for declaration under the Maharashtra Rent Control Act. The pleadings in the plaint clearly demonstrate that a declaration of tenancy is sought by the plaintiff.

7. Therefore, according to me, the defendant / landlord has not made out any case for rejection of the plaint under the provisions of Order 7 Rule 11(a) and (b) of Civil Procedure Code.

8. Hence, this Civil Revision Application is rejected. No cost.

9. The Applicant / Original defendant is granted six weeks time to file written statement.

(RAJESH S. PATIL, J.)