

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

WRIT PETITION NO.401 OF 2024

Thomas George Kallukaran

...Petitioner

vs.

Newshawk Multimedia Pvt. Ltd.

...Respondents

....

Ms. Ratna Bhargavan a/w Mr. Hetvi Mota Savla, Ms. Pooja Vishwakarma
i/b M/s. R Bhargavan & Associates, for the Petitioner.

....

CORAM : SANDEEP V. MARNE, J.

DATE : 2 JULY 2024

P.C. :

1 The learned counsel appearing for the Petitioner seeks leave to delete the prayer clause (a) as well as Respondent Nos.2 and 3 in the Petition with a liberty to file a separate Petition in regard thereto. Leave granted. Amendment be carried out forthwith.

2 The grievance of the Petitioner is with regard to order dated 18 October 2023 where the Small Causes Court has refused to frame additional issues suggested by the Petitioner. The learned counsel appearing for the Petitioner has particularly pressed issue no.1 before me, which is about maintainability of the suit. It appears that in the Written Statement specific contention is raised that the suit filed by the Plaintiff is not maintainable before the Small Causes Court. The impugned order passed by the learned Judge of the Small Causes Court would indicate that the Court has refused

to frame the said issue by observing that “There is nothing on record to show at present that the amount was so paid by the defendant and even there is nothing on record as to the entitlement of such tenant to claim such part ownership.” In my view issues are to be framed on the basis of pleadings and not on the basis of evidence. *Prima facie*, therefore the order passed by the learned Judge qua issue no.1 appears to be erroneous.

3 Issue notice to the Respondent No.1, returnable on 12 August 2024. In addition to Court notice the Petitioner is permitted to serve private notice on the Respondent No.1 and file Affidavit-of-service before the next date of hearing.

4 Till the next date of hearing, the Trial Court is requested to adjourn the proceedings.

(SANDEEP V. MARNE, J.)

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