

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

WRIT PETITION NO.401 OF 2024

Thomas George Kallukaran

....Petitioner

V/S

Newshawk Multimedia Pvt. Ltd. & Anr.

....Respondents

Ms. Ratna Bhargavan a/w Ms. Hetvi Savla *for the Petitioner.*

Mr. Khan Javed Akhtar *for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

DATE : 11 SEPTEMBER 2024.

P.C.:

1 The Petitioner has filed this Petition challenging the order dated 18 October 2023 passed by the Small Causes Court on Application at Exhibit-30 filed by the Petitioner for framing additional issues. The Petition, has originally filed contained following prayers:

- “(a) This Hon’ble court be pleased to consider the legality and validity of section 56 of Maharashtra Rent Control Act, and frame rules there under regarding grounds for eviction and transfer of pugree tenancy supported by registered document keeping in view of the provisions of section 56 Maharashtra Rent Control Act.
- (b) That this Hon’ble High Court be pleased to call for the papers and proceedings of RAE suit no.707 of 2021 and on considering the legality and propriety of the said order quash and set aside the order dated 18th October 2023.
- (c) Pending the hearing and final disposal of the Writ Petition the R.A.E. Suit No.707 of 2021 be stayed.

- (d) If this Hon'ble Court is not inclined to stay RAE Suit No.707 of 2021, the small causes court be directed to frame the issues submitted by the Petitioner before proceeding with the suit.

For such other and further reliefs as this Hon'ble Court may deem fit ”

2 During the course of hearing of the Petition on 2 July 2024 Petitioner sought leave to delete prayer clause (a) and delete Respondent Nos.2 and 3 (Union of India and State of Maharashtra) from the Petition with liberty to file a separate Petition in regard thereto. Accordingly prayer clause (a) as well as Respondent Nos.2 and 3 were permitted to be deleted. The learned counsel appearing for the Petitioner would submit that a separate Petition has been filed by the Petitioner before Division Bench of this Court setting up a challenge to the virus of section 56 of the Maharashtra Rent Control Act, 1999 (MRC Act).

3 This leaves only the correctness of order dated 18 October 2023 to be determined in the present Petition.

4 The suit is filed by the Plaintiff-landlord against the Petitioner/Defendant seeking recovery of possession of the suit premises on the ground that the suit premises were not being used for the purpose for which they were lent, without a reasonable cause, for a continuous period of six months immediately preceding the date of the suit. There appears to be no dispute about existence of landlord tenant relationships between the parties. Ordinarily considering the pleadings in the plaint, the only issue that needs to be decided in the suit is whether the Plaintiff can establish non-use of the tenanted premises for continuous period of six months immediately preceding

the date of the suit without a reasonable cause. The said issue has already been framed by the learned Judge. Order dated 3 July 2023 framing issue read thus:

- “1. Whether plaintiff proves that, defendant did not use the tenanted premises, for which they were let, without reasonable cause, for a continuous period of six months immediately preceding the date of suit?
2. Whether plaintiff is entitled to decree of eviction?
3. Whether plaintiff is entitled to mesne profits?
4. What order and decree?”

5. Petitioner filed Application at Exhibit-30 seeking framing of following additional issues:

- “1. Whether the suit is maintainable regarding a Pagadi suit premises wherein the tenant is a part owner by paying 2/3 of then market value to the original landlord.
2. Whether Section 56(1) of Maharashtra Rent Control Act which specifies the tenant’s right to receive consideration can be avoided by the landlord by filing an evection suit?
3. Whether an eviction Suit can be filed on any other ground than non-payment of rent and misuse of the suit premises in Pagdi Tenancy?
4. Whether closing of the suit premises for more than 6 months with Valid reason of going abroad for treatment can be considered as a ground of eviction in pagadi tenancy?
5. Whether the transfer of ownership to the present landlord is valid and binding in absence of the consent of the pagadi tenants who are 2/3 owners of their respective tenancy premises?
6. Whether the suit is liable to dismissed on the ground of misjoinder of parties i.e. all the legal heirs of late Kallukarnan Agustin George?
7. Whether other legal heirs who are children and grand children of late Kallukaran Agustin George can be termed as third parties?
8. Whether any report can be termed valid regarding the addition and alteration affected prior to purchase of the suit premises by the present landlord?
9. Whether special power of attorney holder to conduct the suit in the court can be termed as third party inducted in the suit premises.”

6 In his Written Statement Petitioner has raised the ground that section 56 of the MRC Act has legalised acceptance of claiming which confers right on the tenant to sell the premises with the consent of the landlord by sharing the consideration in proportion of 1/3 and 2/3. On the basis of this contention, it is sought to be pleaded in the Written Statement that the suit itself is not maintainable before the Small Causes Court as the Defendant has become part owner of the suit premises.

7 Without going into the correctness of the said pleading raised by the Defendant, since an objection about maintainability of suit before Small Causes Court is raised in the Written Statement. It would be appropriate that an issue in that regard is framed. In my view therefore, the Trial Court shall frame the following additional issue:

“1A Whether Defendant proves that the suit is not maintainable before the Small Causes Court?”

8 Except the above issue, it is not necessary to frame any additional issue in the suit. This limited extent the impugned order dated 18 October 2023 stands modified. The Small Causes Court shall proceed to decide the suit on its own merits without being influenced by any of the observations made in the present order. With the above directions, the Writ Petition is **disposed of**.

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by SUDARSHAN
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(SANDEEP V. MARNE, J.)