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

WRIT PETITION NO. 7918 OF 2024

Hirabai Krushna Badade and Ors.

.. Petitioners

Versus

Prashant Pannalalji and Anr.

.. Respondents

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- Mr. Sanjay P. Shinde, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 08, 2024.

P.C.:

- 1.** Heard Mr. Shinde, learned Advocate for Petitioners.
- 2.** Present Writ Petition has been filed by the Petitioners / Defendants seeking to frame an additional issue as to whether the Defendants were tenant of the Suit property or otherwise. *Prima facie*, it is seen that Defendants were prosecuting the tenancy case being Tenancy Case No.54 of 1971 before the Competent Authority and it appears that after the first order of 20.11.1971 having been passed therein, the said case has travelled further right upto the MRT stage. MRT has passed an order dated 09.02.2016 wherein it is held that the order dated 20.11.1971 is recorded without jurisdiction and is not binding and on the basis of that order, Plaintiff is seeking possession from the Defendants in the present Suit proceedings.

3. Mr. Shinde, learned Advocate for the Defendants would inform me that the order passed by the MRT is challenged by the Defendants and the said challenge is pending in this Court. The learned Trial Court after taking cognizance of the aforesaid issue and the facts has kept it open for the Defendants in paragraph No.13 of the impugned order by stating that if the Defendants succeed in their challenge before the Appellate Court against the order dated 09.02.2016 and if the findings of the Tenancy Court are confirmed in their favour, only then the situation can be different and then the Application filed by the Defendants for framing of an additional issue of tenancy can be allowed.

4. It is therefore rightly held by the learned Trial Court that when the issue regarding tenancy and the right of the Defendants is pending challenge before the Superior Court under the Tenancy Act, in those circumstances framing of the issue of whether the Defendants are the tenant of the Suit property or not cannot allowed.

5. I am in complete agreement and in consonance with the reasons given by the learned Trial Court while passing the impugned order dated 06.12.2023 while determining the Application. No fault whatsoever can be found in the said order and the said order dated 06.12.2023 is sustained. Resultantly Writ Petition fails.

6. Needless to state that contentions of the Defendants are expressly kept open, even if the Defendants succeed in their challenge to the tenancy order and if such a right is available to the Defendants in law.

7. With the above observations and directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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