



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5763 OF 2023

Shri Amol Dulharwar Kachi .Vs. Sau. Poornima Balakdas Manwatkar and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.Y. Mandpe, Advocate for petitioner.

Shri A.C. Khare, Advocate for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATED : 28/11/2024

1. Heard learned counsel for the petitioner (original defendant No.2) and the learned counsel for the respondent No.1 (original defendant No.1). None appears for the respondent No.2 (original plaintiff).

2. The petitioner/original defendant has filed the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of plaint. The contention of the petitioner was that in terms of Section 22 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Act of 1971"), a suit could not be filed without previous permission of the Competent Authority. The trial Court has rejected the application by taking recourse to the Notification issued under the Maharashtra Housing and Area Development Act, 1976 (for short "Act of 1976"). Reliance was so placed because the respondent No.2's Counsel referred to said Notification.

3. In my view, reference to said Notification is uncalled for because the petitioner had referred to the provisions of the Act of 1971 and not the Act of 1976. However, after going through Section 22 of the Act of 1971, it is noticed that bar to file suit, without previous permission of the Competent Authority, is for obtaining any decree or order for eviction of an occupier from any building situated in slum area.

4. In the present case, respondent No.2 has filed suit, not for eviction but for injunction restraining the petitioner and respondent No.1 from dispossessing the respondent No.2 and from making construction over the property. Though the prayer in the suit is not happily worded, if read in the light of the pleadings, it is for protecting possession and not for eviction of the respondents. Thus, the suit is not for eviction but is a suit simplicitor for injunction. The bar under Section 22 of the Act of 1971, therefore, will not be attracted.

5. In the circumstances, though the reasons assigned by the trial Court are incorrect, the finding appears to be correct. No interference, therefore, is called for in the impugned order.

6. The petition is dismissed.

(ANIL L. PANSARE, J.)