



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4422 OF 2024

Imran Ahemad Khan Khadeer Ahemad Khan

VERSUS

Ravikant Rajaram Shinde And Others

Mr. Z. J. Pathan a/w Mr. G. R. Syed, Advocate for Petitioner
Mr. M. M. Patil (Beedkar), Advocate for Respondent Nos. 1 to 3

CORAM : R. M. JOSHI, J.

DATE : 07th March, 2025

PER COURT :-

1. This petition takes exception to the order passed by Trial Court in Regular Civil Suit No. 17/2018 vide Exhibit 5 dated 21.02.2018 and part interference by the District Court in Misc. Civil Appeal No. 19/2018 by order dated 01.02.2024.

2. Petitioner is plaintiff in Regular Civil Suit No. 17/2018. He filed suit for declaration and injunction in respect of the suit shop. It is case of plaintiff that previously the suit shop was in possession of Rajaram Shinde, however, over a period of 7 years he did not conduct the business there from and also it failed to pay the rent towards the shop. He further claims that society has terminated the tenancy and membership of Rajaram Shinde. There is further averment that on 10.01.2017, in accordance with law, plaintiff filed application and

requested the society to accept his membership. On 15.02.2017, possession of the suit premise came to be handed over to the plaintiff. Defendant appeared in the suit and registered the contentions of plaintiff.

3. Learned Trial Court recorded findings with regard to the issuance of notice to Rajaram Shinde on 21.01.2017 and, therefore, it is held that question of dispossessing him on 09.01.2017 under panchnama does not arise. The said finding of fact recorded by Trial Court is confirmed by the Court in Misc. Civil Appeal No. 19/2018.

4. Learned counsel for the petitioner/plaintiff submits fact that the defendant has not filed any proceeding against the order impugned passed below Exhibit 5 in Regular Civil Suit No. 17/2018 and Misc. Civil Appeal No. 19/2018 and this fact indicates that the defendant is not in possession of the suit property and hence, not aggrieved by the said order. It is his submission that there is evidence placed on record before the Trial Court indicating allotment of the suit shop by the society to plaintiff and as such the orders impugned cannot sustain.

5. Learned counsel for respondents/defendants drew attention of the Court to Paragraph 21 of the order passed below Exhibit 5 by the Trial Court and Paragraph 13 of the order of the Appellate Court to

contend that there was no question of issuance of notice dated 21.01.2017 if its possession has taken place on 09.01.2017 and hence this order in question do not require interference.

6. Since the plaintiff has filed suit seeking injunction, burden is on the plaintiff to prove his case with regard to the title and possession of the property. There is no dispute made by the plaintiff over the fact that defendant Rajaram was allotted the said suit shop and was in possession thereof. The entire stress of the plaintiff is on panchnama dated 09.01.2017 in order to contend that the Rajaram was dispossessed by following due process of law on 09.01.2017. The said contention of the plaintiff however is falsified by admitted fact that a notice was issued to Rajaram on 21.01.2017. If it is so, it is not possible to accept that after he was already dispossessed, notice was issued. Apart from this, there is finding of fact recorded by the Appellate Court to the extent that in the panchnama dated 09.01.2017, the number of suit shop is not appearing therein. Thus, prima facie findings recorded by Courts below are consistent with the material placed on record.

7. It is thus, clear from aforestated evidence that the plaintiff was unable to prove that the Rajaram was removed from the suit property by following due procedure of law. In such circumstances, order passed by the Trial Court below Exhibit 5 cannot be faulted with. Since

the defendant did not challenge the order of rejection of Trial Courts appointing Court receiver by filing any proceedings, this Court is not inclined to cause interference in the said order in this petition. Suffice it to say that petitioner is failed to cause any interference in the orders impugned.

8. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

bsj