



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8599 OF 2024

Kishan Relumal Ahuja

....Petitioner

VERSUS

Ashok Khushalchand Kothari

.....Respondent

Mr. V. P. Latange, Advocate for the Petitioner.

Mr. V. S. Bedre, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 23rd SEPTEMBER, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exhibit 43 in Regular Civil Suit No. 67/2019 whereby the Application filed by the Defendant/tenant under Order 26 Rule 9 of Code of Civil Procedure for appointment of Court Commissioner to ascertain the status of the suit property came to be rejected by the Trial Court.

3. There is no dispute about the fact that Respondent/original Plaintiff filed suit for eviction of Defendant/Tenant from the suit premises and also for recovery of

arrears of rent. Though the Defendant has filed written statement, admittedly, no counter claim is filed. As such, Defendant is not seeking decision on any issue sought to be raised by him before the Trial Court.

4. In the light of the aforestated facts, the Trial Court has made observations that the suit is for eviction and possession of the suit property. It is held that there is no need to appoint the Court Commissioner to ascertain the situation of the suit property. In the facts of the case wherein no counter claim is filed nor any action as contemplated under the law has been initiated by the tenant, which is a subject matter of decision before the Trial Court, the appointment of Court Commissioner to ascertain the status of the suit property was wholly unnecessary.

5. In the facts of the case, refusal of the Trial Court to appoint Court Commissioner is fully justified. Hence, there is no merit in the Petition. Petition stands dismissed.

(R. M. JOSHI)
Judge