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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13382/2024

ARUN NARHAR ZURALE ..PETITIONER
VS
AKHIL DESHASTHA RIGWEDI BRAHMAN
MADHYAWARTI MANDAL, MUMBAI & ORS ..RESPONDENTS

Mr. S.R.Page for the Petitioner.

Dr. Uday Warunjikar a/w. Ms.Vaishnavi Nagarjoge i/b. Ms.Preeti
Walimbe for Respondents.

CORAM : RAJESH S. PATIL, J.

DATE : AUGUST 14, 2025.

P.C. :

1) This Writ Petition is filed under Article 226 of the Constitution of India challenging an Order dated 11th July, 2024 passed by the Trial Court on Order below Ex.64, in RAE Suit No. 7 of 2015.

2) The present Petitioner is a Defendant in the eviction suit who has filed an application Ex.63 praying therein that, he be permitted to call the Executive Engineer, MHADA for examining him as a witness. It is the case of the Defendant-tenant that in the suit for eviction filed against him, apart from the ground of “bonafide requirement”, there

are many other grounds including the ground of “non-user”. Therefore, at this stage, after the Defendant had examined himself as D.W.1 and his evidence closed on 23rd April, 2024 and he having examined his daughter as a witness during the pendency of the present Writ Petition, he desired to examine the Officer of MHADA as witness.

3) It is submitted that no prejudice would be caused to the Plaintiff-landlord if the Officer of the MHADA is examined. So also, considering the reply filed by the Plaintiff to the Application Ex.64, it is clear that they don't have any objection in real sense if the Application could have been allowed. However, the learned Judge of the Trial Court has erroneously held that the suit for eviction is filed only on the ground of “bonafide requirement”. There is no doubt that the suit is filed on various grounds for eviction, including the ground of “non user”. Reply of the Plaintiff to the Application filed by the Defendant Ex.64 reads as under :-

Say of the Plaintiff on Defendant's Application to issue

Witness Summons

“ In the above matter, the Cross of D.W.1 completed. On 4th May, 2024, there is no dispute about redevelopment proposal was given by the earlier trustees. There is no issue framed as

regards to the redevelopment. Hence, nothing is required to be proved from MHADA. As such the present Application be dismissed with cost. ”

4) In my view, the Trial Court was under the belief that the suit is only on the ground of ‘bonafide requirement’. Therefore, according to me, there is perversity in the impugned order passed by the Trial Court Judge on 11th July, 2024. Writ Petition is disposed off with following directions :-

ORDER

(i) The impugned order dated 11th July, 2024 passed on Order below Ex.64, is hereby quashed and set aside.

(ii) The Application filed by the Petitioner before the Trial Court being Application Ex.64 hereby stands allowed.

(iii) The Petitioner (original Defendant) would make an endeavour to examine the witness who would be the Officer of the MHADA, in one hearing or at the most in two hearings.

(iv) The Plaintiff would thereafter cross examine the said witness, as early as possible.

(Rajesh S. Patil, J.)