

MHBU070006642016



Order Below Application (Exh.104).

(Passed on 14.03.2023)

1. Perused the application and Say.
2. Here, the defendant is praying for trying the Issue no. 1(A) as preliminary issue U/O 14 Rule 3 of CPC. In the application the applicant defendant has submitted that the Issue no. 1 (A) can be decided on basis of the pleading made in the plaint and the notice issued prior to filling of the suit. It is further claimed that the issue goes in to the root of the suit and if it is found that the plaintiff has failed to established relationship of licensor and and licensee, the suit shall not be maintainable as it is filed Under the Maharashtra Rent Control Act. On such ground, the defendant has prayed to try the Issue no. 1 (A) as preliminary Issue.
3. The application is opposed by the plaintiff by filling its say vide Exh. 105. In the Say, the plaintiff has submitted that the application is not bonafied and tenable. It is further disclosed that the plaintiff has already filed affidavit of evidence on all the issues long back and the defendant has unnecessarily moved this application just to delay the suit. It is further claimed that the Issue no. 1 (A) cannot be tried as preliminary issue and with such submission it was prayed to reject the application.
4. Heard both sides.
5. Perused record. Record shows that the suit is fixed for evidence of the plaintiff and it has already filed affidavit of examination-in-chief on the record. The affidavit of examination-in-chief is regarding all the issues which have been framed by this Court previously. Further, record shows that the evidence required on issue no. 1(A) almost covers

the entire scope of the suit and for this reason treating the Issue no. 1 (A) as preliminary Issue would become meaningless. If it so it would be better to record entire evidence at once to decide all the issues framed by this Court rather than to record it in parts for decision of the preliminary Issue. Further, Order 14 Rule 2 (2) of CPC provides that where Issues both of Law and of facts arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed off on an issue on law only it may try that issue first if that issue gets to the jurisdiction of the Court or a bar to the suit created by any law in force. However, the Issue no. 1 (A) involves issue of fact and issue of law altogether. Therefore, it would not be proper to try the issue no. 1 (A) as preliminary issue. Considering above facts, it can be said that the application is devoid on merit and it deserves to be rejected. Therefore, I am passing following order.

Order

Application (Exh. 104) is hereby rejected.

Place : Shegaon.
Date : 14.03.2023.

Sd/-
(J.R Ghadge)
Civil Judge Junior Division
Shegaon, Dist. Buldana.

I, *K.S. Deshmukh*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.