

Order below Exh. 27 in R.C.S. no. 46 of 2007

The plaintiff has filed the present application for appointment of commissioner.

2) The plaintiff contended that the defendant is the tenant of the plaintiff. The defendant has erected illegal construction of 8 feet by 6 feet towards eastern side of the suit property without permission of the plaintiff. The plaintiff has given an application regarding it to Mahad Nagar Parishad on 29/03/2006. The defendant has no right to construct to same and he has lost his tenancy right. It is necessary to come on record the exact nature of the construction. He further contended that in order to adjudicate the matter in controversy and assist the Court to decide on merit, it is necessary to appoint Court Commissioner to find out the exact position on the suit property.

Hence prayed to allow the application.

3) The defendant opposed the application contending that the application is not legal. The defendant is in possession of 41 feet by 19 feet room right from the beginning. The plaintiff has filed the present suit under the Rent Act. The present application is filed to collect the evidence. The plaintiff has to prove his case by independent evidence. The defendant has not erected any construction as alleged by the plaintiff. The plaintiff has filed the present application to harass the defendant.

Hence prayed for rejection of the application.

4) Perused the application and say.

5) Heard.

6) From the perusal of the record, it is apparent that the plaintiff has filed suits against other two tenants in the suit property apart from the present defendant relating to the same subject matter. The plaintiff is intending to bring on record the nature and extent of the construction made in the suit property by the defendant thereby gathering evidence in that regard. If the present application is allowed, it would tantamount to rendering an assistance to the plaintiff for the collection of evidence. The same is not permitted by law.

7) In the backdrop of above discussion and considering the peculiar facts and circumstances of the present case, it would not be desirable to allow the present application.

Accordingly, the following order is passed:-

ORDER

1) The application (Exh. 27) is hereby rejected.

2) Parties to bear their own costs.

Mahad.
Date: 29/03/2016

(J.T. Koregaonkar)
Jt. Civil Judge, J.D., Mahad.