MHSCA-20033732013

IN THE COURT OF SMALL CAUSES, AT MUMBAI
ORDER BELOW EXHIBIT - 35
IN
R.A.D Suit No.1999 of 2013

1. Omprakash Lalbahadursingh & Ors. ..Plaintiffs

V/s.

1. Asha Gupta wd/o Dinesh Gupta & Ors. ..Defendants

Coram: S.S.Ghuge
Judge,
Court Room No.14,
Date: 10.10.2022

ORDER:

1. This is an application is filed by the defendant for rejection of plaint on the ground that suit premises / property in respect of which the suit is filed which was in dilapidated condition and it fell down during the pendency of the suit, therefore, the cause of action does not survive.

2. Plaintiff has filed reply to the application at **Exhibit-37** and stated that, even if the suit premises is demolished, plaintiff right to declare himself as tenant is not affected in any manner. It is further stated that, application is not maintainable and it be rejected.

3. From the contents in the application and say filed thereon following points arose for my determination and I record my findings thereon as under :-

Sr.No.	Points	Findings
01	Whether the application is liable to be allowed ?	..In negative.
02	What order ?	As per final order.

REASONS

As to Point No.1:

4. Heard both sides. Advocate for the defendant argued that, suit property is not in existence , therefore, the cause of action does not survive, hence, plaint be rejected. On the other hand, Advocate for the plaintiff argued that, even though the premises is demolished, the suit is not affected in any manner, hence the application be rejected.

5. It is pertinent to note that, the suit is filed for declaration of tenancy rights in respect of the suit premises and for order directing the defendant nos. 4 to 6 to transfer the rent bill in the name of plaintiff as well as defendant. During the pendency of the suit, the suit premises fell down as it was in dilapidated condition. It is pertinent to note that, though the premises is not in existence, the tenancy right still survives, hence application is liable to be rejected, therefore, I answer point no. 1 in negative and proceed to pass the following order:

:: ORDER ::

1. Application is rejected.
2. No order as to costs.

DISTRICT COURTS MAHARASHTRA

Digitally signed by GHUGE SACHIN SURESH
Date: 2022.10.12 16:57:03 +0530

[S.S.Ghuge]
Judge,
C.R. No. 14

Date :10.10.2022