

**IN THE COURT OF SMALL CAUSES AT MUMBAI
(Bandra Branch)**

Order below Exhibit 47

in

R.A.E. & R. Suit No. 526/794 of 2011

[CNR No.:- MHSCA3-000052-2012]

Smt. Anandi wd/o Vishwanath Banjan ... Plaintiff

Versus

1. Mrs. Carmin Peter Saldana & Anr ... Defendants

Advocate for the plaintiff : Mrs. Vimala K. Gupta

Advocate for the defendants : Mr. Sunil Dubey

Coram: Santosh D. Chavan,
Judge,

C.R. No. 33,

Date: 6th February, 2020

:: ORAL ORDER ::

This is an application for reappointment of court commissioner and submit its report.

2. Read application and say filed thereon. The sum and substance of the application that as per the Hon'ble Appellate Court the architect was appointed for inspection of suit premises as to whether there is requirement of repairs of suit premises. Thereafter, the architect was appointed and he has filed his report. But no repairs are carried out as per the report of Court Commissioner. So this is an application for reappointment of Court Commissioner.

3. The sum and substance of the say of the plaintiff is that already repairs are made as per Court Commissioner report and there is

no need to appoint Court Commissioner again. It is further contended the application is filed to delay the matter. Hence, it is prayed that application be rejected.

4. I have heard both the learned counsel for the respective parties. Learned advocate for plaintiff submitted there is no provision in Maharashtra Rent Control Act, 1999 to appoint the Court Commissioner. She submitted that the Maharashtra Rent Control Act, 1999 is special statute and there is not application of Code of Civil Procedure, 1908. she further submitted that Court Commissioner cannot be appointed for collection of evidence. According to her application is made to delay the matter. Hence she submitted to rejected the application. It is her further submission that in view of section 28 of the Maharashtra Rent Control Act, 1999 only the landlord has power to inspect the suit premises.

5. I have considered rival contention of the parties as well as order passed by appellate Court in Revision application No. 130 of 2016 order dated 17.02.2017. I have also gone through the provision of section 75 read with order 26 rule 9 of Code of Civil Procedure, 1908. the provisions of Code of Civil Procedure, 1908 are applicable in a suit filed under provisions of Maharashtra Rent Control Act 1999. the fact is that plaintiff claiming that she has carried out the repairs as per report of architect. But the defendants are denied the said fact so elucidating of matter in dispute the appointment of Court Commissioner is necessary. There is no substance and force in the submission learned advocate for plaintiff. Hence, application is allowed. Architect Mr. H. G. Samant & Associates be appointed as a Court Commissioner for the

purpose of bring on record real position of suit premises. Architect is directed to issue notices to both the parties well in advance. Defendants to bear the cost of architect. Defendants are directed to submit the report of architect/inspection report within 15 days from the date of this order. There is no order as to costs.

(Dictated and pronounced in open Court)

Date: 06.02.2020

Order dictated on :06.02.2020
Order checked & signed on :06.02.2020

(Santosh D. Chavan)
Judge, C.R. No. 33