

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6228 OF 2014**

**Shri. Gajanan Ramchandra Ranade**

**.. Petitioner**

**Versus**

**Shri. Kailash Omkar Jadhav**

**.. Respondent**

**Mr. S. A. Ghaisas, for the Petitioner.**

**Ms. Namrata S. Bobade i/by Mr. M. J. Bhatt, for the Respondent No.1.**

**CORAM : R.M. SAVANT, J.**

**DATE : 07<sup>th</sup> SEPTEMBER, 2015**

**PC.**

1. The order dated 27.08.2013 passed by the Learned Joint Civil Judge Senior Division, Kalyan, rejecting the Application Exh.16 filed by the Petitioner invoking Order 15A of the CPC is taken exception to by way of the above Petition. The Petitioner herein is the original Defendant in Special Civil Suit No.189 of 2012 which he has filed seeking cancellation of the Agreement dated 15.05.2010 as also cancellation of the understanding as recorded in the document dated 02.03.2011 between the Plaintiff and the Defendant. In the said suit, the Plaintiff has also claimed mesne profits for the use of the premises in question. It appears that there was a Lease Agreement between the Plaintiff and the Defendant i.e. Respondent herein which was for the period 28.05.2009 till 21.04.2010. It is after the said Lease Agreement that the Agreement dated

15.05.2010 was entered into between the parties under which Agreement the Defendant agreed to sell the suit property to the Plaintiff. It is for specific performance of the said Agreement that the Defendant herein has also filed suit being Special Civil Suit No.437 of 2011. It is after the suit filed by the Respondent herein i.e. Special Civil Suit No.437 of 2011 that the instant suit was filed by the Plaintiff i.e. Special Civil Suit No.189 of 2012 in which suit the instant Application Exh.16 came to be filed for directing the Respondent herein to deposit the lease rent at Rs.3500/- per month from May 2010. The Trial Court has rejected the application on the ground that the relationship as a lessor and lessee has not been admitted by the Defendant and that since the suit is for specific performance of the Agreement dated 15.05.2010 the application could not be allowed. In my view, having regard to the facts as aforesaid as also having regard to the mandate of Order 15A as applicable in the State of Maharashtra, the order passed by the Trial Court cannot be found fault with. Since the Petitioner/Plaintiff has also prayed for mesne profit in the event he succeeds he would undoubtedly can apply for calculation of the mesne profits. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

**[R.M. SAVANT, J]**

“Certified to be true and correct copy of the original signed order.”