

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

WRIT PETITION NO.8757 OF 2014

Edward Koilpichai

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. A. K. Tripathi a/w Mr. Jayraj S., for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 24th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.05.2014 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the Revision Application filed by the Petitioner came to be dismissed and resultantly, the order dated 26.02.2014 passed by the Learned Judge of the Small Causes Court, Mumbai came to be confirmed. The suit in question being RAE Suit No.1690 of 2011 has been filed for eviction of the Petitioner/Defendant on the grounds mentioned in the said suit. In the said suit, the Petitioner herein who is the Defendant has raised a preliminary issue under Section 9A as regards the jurisdiction of the Small Causes Court to try the suit on the ground that the premises in question are declared as a slum and that

the Defendant also questions the locus-standi of the Plaintiff to file the suit. The Trial Court has accordingly framed a preliminary issue under Section 9A. It appears that the Plaintiff has referred to and relied upon various documents. In view thereof the Defendant filed the instant application Exh.42 for discovery and inspection. The said application was replied to on behalf of the Plaintiff vide Exh.44. The Trial Court has considered the said application and has rejected the same on the ground that the proceedings are at the stage where the preliminary issue is required to be decided and therefore, the said application for discovery and inspection could not be allowed. The Trial Court has recorded that copies on which the Plaintiff relies upon have been produced and also the inspection of the said documents is offered to the Defendant, but inspection is not taken. The Trial Court as indicated above has accordingly rejected the application by order dated 26.02.2014.

2 . The Defendant aggrieved by the said order dated 26.02.2014 filed Revision Application being No.120 of 2014. The Appellate Bench of the Small Causes Court who heard the Revision Application having regard to the fact that the parties were at the stage of deciding the preliminary issue as also having regard to the fact all the documents on which the Plaintiff was relying, inspection was offered but was not taken, did not deem it appropriate to interfere, as according to it the said order by the

Trial Court was not revisable. The Appellate Bench has accordingly dismissed the Revision by order dated 05.05.2014. In the light of the fact that the proceedings are at the stage where the preliminary issue is to be adjudicated, in my view, the orders passed by the Courts below rejecting the application Exh.42 do not merit any interference at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed. However, it would be open for the Petitioner to accept the offer of inspection of the documents and take inspection by prior intimation to the Learned advocate for the Plaintiff.

[R.M. SAVANT, J]