IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11473 OF 2014

Bata India Limited .. Petitioner
vs.
Bindiya Co-operative Housing Society Limited. .. Respondent

Mr. Shriram Redij for Petitioner.

**CORAM : M. S. SONAK, J.**
**DATE: 25 JUNE 2015**

**P.C**. :-

1] **Not on Board. Upon production, taken on board**.

2] This petition challenges order dated 17 October 2014 made by the Small Causes Court at Mumbai rejecting the petitioner's application under Order 18 Rule 17 of the CPC for recall of certain witnesses in the context of certain documents with which the petitioner seeks to confront the said witnesses.

3] The learned counsel for the petitioner submitted that the learned Small Causes Court was not right in its reasoning recorded in paragraph 9 of the impugned order in as much as it is stated therein that the provisions of Order XVIII Rule 17 of CPC can only be invoked by the Court and only the Court can recall witnesses

and itself puts question to said witnesses as the Court thinks fit. In any case, the learned counsel for the petitioner submitted that the petitioner desire to confront the witnesses with certain rent receipts and consent terms and such confrontation was essential for determining the mesne profits.

4] Having heard the learned counsel for the petitioner and perused the record, in my judgment, no case is made out to interfere with the impugned order. Order XVIII Rule 17 of the CPC indeed provides that the Court may at any stage of the suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit. Although, this does not mean that the parties to the suit may not invite the Court to exercise the powers under Order XVIII Rule 17 of the CPC, the import of the provision is that it is for the Court to be satisfied that there is necessity to recall any witness and upon such recall, it is for the Court to put such questions to such witness as it thinks fit. In such circumstances, it cannot be said that there is any error of approach on the part of the learned Small Causes Court.

5] That apart, there is no proper explanation as to why the documents or the evidence which the petitioner now seeks to bring

on record by resort to the provisions of Order XVIII Rule 17 of the CPC could not have been placed earlier by exercise of due diligence. The petitioner seeks to make reference to certain consent terms in proceedings which commenced in the year 1980 for the purposes of determination of mesne profits from the year 2008. In the application seeking recall all that the petitioner has stated is that it came across some vital documents, without disclosing either the source of such documents or the reasons as to why the petitioner could not give such documents earlier.

6] There is no reason to interfere with the impugned order, particularly at a stage where the matter was virtually posted for final arguments on the aspect of mesne profits. This petition is therefore dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**

Chandka