

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11568 OF 2015**

Madhuben Jayantilal Bhatt & Ors

..Petitioners

Vs.

Vijay Patni (deceased) through LRs & Ors

..Respondents

Mr. K. C. Singh i/b Mr. K. C. Upadhyay for the Petitioners

CORAM : R. M. SAVANT, J.

DATE : 30th NOVEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-11-2015 passed by the Learned Judge of the Small Causes Court by which order, the application Exhibit 34 for framing of additional issues came to be rejected. The additional issues framing of which was sought, were to the following effect, non joinder of proper parties, whether the Plaintiff proves that the tenancy is validly terminated or not before filing of the Suit, whether the right of the Plaintiff to prosecute the Suit survives.

2 It is required to be noted that the evidence of the parties was closed and the Suit was fixed for arguments. The Defendants were to first commence their arguments, however inspite of opportunity, it seems that the Defendants failed to argue the matter. In view thereof, the Learned Counsel for the Plaintiff argued the matter and the matter was fixed for judgment. It is

thereafter that the Petitioners herein amongst whom was the Defendant No.2 engaged a new Advocate and he sought permission to argue the matter. In view of the fact that since nobody had appeared, the Trial Court started dictating the judgment at which point of time the present Advocate for the Defendant No.2(a) appeared and submitted that he would argue the matter. Hence with a view to grant an opportunity to the Defendant No.2(a), the hearing of the arguments were deferred to 16-11-2015. In spite of the assurance given by the Advocate that he would argue the matter, the Defendants have filed the instant application for framing of additional issues. The Trial Court has rejected it on the ground that instant application has been filed merely to delay and prolong the Suit which is of the year 2000. The Trial Court was of the view that there was no warrant to frame the issues as regards the locus standi of the Plaintiff to file the Suit in view of the fact that the denial of the title of the Plaintiff by the Defendants is evasive.

3 It is required to be noted that in paragraph 17 of the Written Statement the Defendants have mentioned that the Plaintiff has purchased a chawl where there are 20 to 30 rooms and that the Plaintiff is seeking to evict the occupants who are the tenant of the said rooms. It is in the said context that the Trial Court observed that the denial of the title of the Plaintiff was evasive. It is required to be borne in mind that the issues were framed as long back as on 1-7-2000. As indicated above the Suit is at the stage where the Trial

Court had in fact started dictating the judgment at which point of time the present Advocate for the Defendant No.2(a) appeared and submitted that he would argue the matter and filed the instant application.

4 In my view, having regard to the facts as afore stated, the order passed by the Trial Court does not suffer from any illegality or infirmity for this court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]