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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2900 OF 2016

Smt. Kaushalya Wd/o. Baliram Sewhani ..Petitioner.

V/s.

Iqbal H. Calcuttawalla ..Respondent.

Mr.Kunal Bhanage for the petitioner.

Mr.N.A. Khan for the respondent.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

By order dated 29 November, 2016, the parties were put to notice that the petition will be taken up for final disposal. Accordingly, the petition is taken up for final disposal.

2. Heard the learned counsel for the parties. By the impugned order dated 2 December, 2015 passed below Exhibit 110 in RAE Suit No.51/121 of 2000, the learned Small Cause Court Judge has rejected the application taken out by the Petitioner-Plaintiff for issuance of summons to one witness of the petitioner. This application has been rejected by the impugned order.

3. The learned counsel for the Petitioner submitted that finding of the Small Cause Court that the Petitioner was negligent in prosecuting the suit and no indulgence be granted, is incorrect as the record would show. The learned counsel for the respondent on the other hand supported the impugned order and also relied upon the affidavit in reply filed to this petition.

4. Perusal of the impugned order shows that the reason for rejection of the request of the Petitioner-Plaintiff, which in ordinary circumstances is usually granted, is that the request was made at a belated stage. The learned counsel for the Petitioner has pointed out that the cross-examination was over 16 September, 2015 and the matter was adjourned for evidence of further witness to 30 September, 2015 and on that day i.e. 30 September, 2015, the Petitioner moved the present application. This fact has not been considered by the learned Small Cause Court at all before rendering the finding that no steps have been taken by the Petitioner. If the Petitioner-landlady is not allowed to examine the witness in furtherance of her case, great prejudice will be caused to the Petitioner. On the other hand, no prejudice will be caused to the respondent, who as of today continues to be in possession of the premises. Therefore, before passing a drastic order of not allowing a witness to be examine, the learned Small Cause Court Judge ought to have considered the aspect which has been enumerated above. In the circumstances, case for interference under Article 227 of the Constitution of India is made

out. The impugned order dated 2 December, 2015 is quashed and set aside. The application filed below Exhibit 110 in R.A.E. Suit No.51/1221 of 2000 is allowed.

3. The learned Small Cause Court Judge shall accordingly fix the timetable for examination of the said witness. The writ petition is disposed of in the above terms.

(N.M. JAMDAR, J.)