

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 3155 OF 2016**

Rosalind Fernandes @ Reema Kishan Jadhav

..Petitioner

Vs.

Ivor Salvador Viegas

..Respondent

Mr. Shivraj Kunchge for the Petitioner

Mrs. Rohini Pandit a/w Mr. K. Shukla for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 29th FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 30-11-2015 passed by the Learned Judge of the Small Causes court, Mumbai, by which order the application Exhibit 51 filed for deciding the preliminary issue of jurisdiction came to be rejected. The above Petition also challenges the order dated 16-1-2016 passed by the Learned Judge of the Small Causes Court by which order, the Review Application filed by the Petitioner / Defendant came to be rejected. The application for trying the issue of jurisdiction as preliminary issue has been rejected inter alia on the ground that the Suit in question is part heard, the evidence of the Plaintiff is complete and the Defendant is to start his evidence. It is at the said stage that the application for deciding the issue of jurisdiction as preliminary issue came to be filed. It is required to be noted that the Suit in question is of the year 1996.

2 The Trial Court adverted to the fact that Section 9A could be invoked at the commencement of the trial and could not be invoked at the said stage. The Trial Court also adverted to the fact that the Suit is time bound by this court and that the Petitioner /Defendant had knowledge that the Suit is part heard and is pending for his evidence. The Trial Court in the said circumstance observed that the instant application has been filed just to prolong the hearing of the Suit. The Trial Court accordingly rejected the application by imposing costs of Rs.1500/- on the Petitioner / Defendant.

3 The Petitioner / Defendant thereafter sought review of the said order by filing an application Exhibit 57. The Trial Court having regard to the scope of review as posited by Order 47 did not find any reason to exercise review jurisdiction and accordingly rejected the application.

4 The invocation of the Writ Jurisdiction is therefore an abuse of process of this Court. This Court was also inclined to impose costs on the Petitioner / Defendant on the ground that instead of proceeding with the Suit which is of the year 1996 and is at the stage of leading of evidence, the Petitioner / Defendant is filing such type of applications, this Court however refrained from doing so. No case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]