

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

WRIT PETITION NO.2018 OF 2015

**Niranjana C Khandhadiya
Unknown Heirs and Legal Representative
Late Eulalia Vijaykant Shah : Petitioner
versus
Nitinkumar Chhotubhai Swaminarayan & Anr. : Respondents.**

**Mr. Sushrut Desai i/by Mr. R M Haridas for the Petitioner.
Mr. Vishwajeet Kapase a/w Ms. Jyotsana S Kondhalkar i/by Vigil Juris for
the Respondent No.1.**

**CORAM : R. M. SAVANT, J.
DATE : 04th January 2016**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 15/01/2015 passed by the Appellate Bench of the Small Causes Court, Mumbai by which order the Miscellaneous Appeal No.175 of 2012 came to be dismissed and resultantly the order dated 28/09/2012 passed by the learned Judge of the Small Causes Court allowing the Application (Exhibit 8) filed for mandatory orders against the Respondent No.2 herein, and for inspection of the suit premises came to be confirmed.

2 The suit in question being R.A.E. Suit No.565/839 of 2009 has been filed by the Plaintiff i.e. the Respondent No.1 herein for possession of the suit premises as accordingly to the Plaintiff after the death of the original tenant one Eulalia Vijaykant Shah, there is no other person who claims to be

the tenant of the suit premises and therefore the Plaintiff is entitled to the possession of the suit premises. The said suit is pending before the Small Causes Court, Mumbai. It appears that the original tenant Eulalia V Shah expired on 01/05/2009 and her dead body was recovered by the police i.e. the Tardeo Police Station from the suit premises and the police have thereafter sealed the suit premises. The instant Application (Exhibit 8) has been filed by the Plaintiff i.e. the Respondent No.1 herein invoking the statutory right of the landlord under Section 28 of the Maharashtra Rent Control Act, 1999 for inspection of the suit premises as also for a mandatory order directing the police to break open the lock and permit the Plaintiff/Landlord to take inspection.

3 The said Application was opposed to on behalf of the Petitioner herein who claims to be the heir of the original tenant Eulalia V Shah being her sister in law i.e. sister of the husband of the said Eulalia V Shah. The objection was on the ground that there are valuables in the form of articles and documents belonging to the said original tenant in the suit premises.

4 The Trial Court having regard to the mandate of Section 28 of the said Act held that the Plaintiff/Landlord was entitled to take inspection of the suit premises in view of the fact that he had filed a suit for possession. The Trial Court was of the view that since the police have sealed the premises, an

application by way of Order XXXIX Rule 1 of the Code of Civil Procedure was therefore required to be filed by the Plaintiff for breaking open the seal put by the police. The Trial Court accordingly by its order dated 28/09/2012 allowing the said Application (Exhibit 8) and issued directions which are contained in the operative part of the said order. The direction is only by way of permission to inspect the premises, however, there is no direction as regards possession of the premises.

5 The Petitioner herein who is the Defendant in the said RAE Suit No.565/839 of 2009 filed an Appeal before the Appellate Bench of the Small Causes Court, Mumbai. The Appellate Bench of the Small Causes Court reiterated the reasoning of the learned Judge of the Small Causes Court based on Section 28 of the said Act, and accordingly dismissed the said Appeal.

6 In my view, having regard to the conspectus of facts as prevailing in the instant matter wherein the suit premises have been sealed by the police, the reliefs sought vide the said Application (Exhibit 8) and which have been granted by the Trial Court and confirmed by the Appellate Bench of the Small Causes Court, cannot be found fault with. The learned counsel appearing on behalf of the Petitioner sought to raise a contention as regards the applicability of Section 28 of the said Act, to the Respondent No.2. However, the said contention cannot be countenanced in the light of the fact that under Section

28 of the said Act, a landlord is entitled to take inspection of the tenanted premises. In the instant case, though the police have sealed the premises, the premises continue to be the tenanted premises in respect of which a suit for possession has been filed by the Respondent No.1/Plaintiff.

7 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, it is clarified that the Petitioner would be entitled to remain present at the time of inspection of the suit premises. The Plaintiff to take inspection of the suit premises after giving prior notice to the Petitioner herein as also the Respondent No.2. After the inspection is complete the Respondent No.2 would re-seal the suit premises.

[R.M.SAVANT, J]