

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

WRIT PETITION NO. 12802 OF 2016

Shri Vilas Choturam Kirtikar

.... Petitioner

Versus

Shri Harish jagdish Sharma

.... Respondent

Girish Agrawal for Petitioner.
Deepak Devkar for Respondent.

***CORAM : N. M. Jamdar J.
Tuesday 20 December 2016***

ORAL ORDER

. Heard learned Counsel for the parties. In view of the narrow controversy involved, taken up for final disposal.

2. The application filed by the Petitioner/Tenant for bringing certain additional material on record has been rejected by the learned Civil Judge Junior Division, Nashik Road by the impugned order dated 10 August 2016. The learned Counsel for parties have advanced various submissions as regard the relevancy of the documents which are sought to be brought on record.

According to the learned Counsel for Petitioner, the documents show that the Respondent/Landlord has not disclosed various premises in his possession and has falsely pleaded the need of his daughters. On the other hand, it is contended by learned Counsel for the Respondent that the documents do not indicate that either the Respondent or his daughters have any connection with the same.

3. In the impugned order, the learned Judge has held that the main relief as sought for by the Respondent/Landlord is for default in payment of rent and non-user, but the ground is also of Bonafide requirement. The Tax Receipt which has been shown by the learned Counsel for Petitioner bears the name of 'Sharma Sucheta Harish'. Therefore, not allowing the Petitioner to cross examine the Respondent/Landlord in all this aspects of the matter may cause prejudice to the Petitioner. However, it cannot be lost sight of that the suit is filed in the year 2009. The application has been filed in the year 2016. The application discloses no reason at all as to why the documents could not have been placed on record earlier and what was the due diligence that was carried out. Therefore, unless this hurdle is crossed by the Petitioner, I am not inclined to extend any relief in favour of the Petitioner.

4. In the circumstances, the appropriate course of action would be to quash and set aside the impugned order and permit the Petitioner to file an application stating on record the requirement of due diligence, without the satisfactorily proof of which the Court may not have any power to grant relief as sought for by the Petitioner. Accordingly, the Writ Petition is disposed as as follows. The impugned order dated 10 August 2016 is quashed and set aside. Liberty is granted to the Petitioner as above. The application filed by the Petitioner will be considered on its own merits. This indulgence is granted, only if the Petitioner files an application within the period of two weeks from today.

(N. M. Jamdar, J.)