

Sequeira

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

WRIT PETITION NO. 5491 OF 2013

Rosailda Prasad Samoda .. Petitioner

Vs

Andrew Roque Correia

- since deceased represented through
his heirs and legal representative -

1/1. Curie Andrew Correia & ors. .. Respondents

Mr.Rajesh Datar, for the Petitioner.

Mr.V.E.Pereira, for Respondent Nos.1 & 2.

***CORAM : N.M.Jamdar, J.
Wednesday, 30 November 2016.***

Oral Order :

By this petition, the Petitioner has challenged the order passed by the Appellate Bench of Small Causes Court dated 9 April 2013 allowing the R.A.E Suit No.1619 of 2008 filed by the Respondents -landlord and setting aside the Judgment and Order dated 22 December 2011 passed by the learned Small Causes Court Judge, Mumbai in Marji No.560 of 2011.

2. The Respondents – landlord filed a R.A.E Suit No.1619 of 2008 for eviction of the original tenant Smt.Premavati Prasad Samoda. In the suit, summons was duly served. The original tenant filed her appearance through an advocate. Thereafter no written statement was filed and the learned Small Causes Court Judge by

order dated 5 September 2009 decreed the suit. The Respondent-landlord thereafter filed an execution proceedings No.533 of 2010. At that time the original tenant filed a Miscellaneous application seeking to set aside the exparte order dated 5 September 2009. The learned Small Causes Court Judge, by Judgment and Order dated 22 December 2011, allowed the Application and set aside the exparte decree. This order was challenged by the Respondent-landlord in Revision Application No.61 of 2012, which by the impugned order, has been allowed.

3. Heard learned counsel for the parties. The learned counsel for the Petitioner submitted that it was due to the fault of the advocate that the Written statement was not filed and considering the age of the original tenant, the learned Small Causes Court Judge had rightly exercised his discretion in setting aside the exparte order. The learned counsel for Respondents supported the impugned order and pointed out that the original tenant is now no more.

4. The Petition is being prosecuted by one daughter of the original tenant. The cause made out in the application filed by the original tenant to set aside the exparte decree was that the sons are settled and working abroad, and her daughters are settled in their matrimonial homes and therefore, she could not get any help from them to pursue the matter diligently. The learned Appellate Bench has rightly taken a note that merely because vakalatnama is given to the advocate, the duty of the litigant to keep track of the matter is not over. The

learned counsel for Respondents points out that the suit proceedings went on for a year. There is absolutely no reason as to why even a basic inquiry by the original tenant was not made.

5. In the exercise of the power of superintendence, the criteria to be kept in mind is whether any failure of justice has occasioned and whether the order challenged is patently illegal. The Petition is being pursued today by one of the daughter of the original tenant. The original tenant has passed away. A categorical stand was taken by the original tenant that she was staying alone and during this period, none of her sons or daughters helped her in pursuing the litigation. Original tenant had asserted that daughters are happily settled in their own house and therefore they did nothing in respect of this litigation. This fact will have to be taken into consideration before proceeding to examine whether equitable jurisdiction of this Court needs to be extended in favour of the present Petitioner, the daughter of the original tenant. The Respondent - landlord, who is awaiting the fruits of the decree which was passed in the year 2009, cannot be blamed as there is no fault of the Respondent-landlord. Considering these facts, I am of the opinion that no case is made out for exercising the power of superintendence of this Court to interfere with the impugned order, at the instance of this Petitioner. Writ Petition is accordingly rejected.

(N.M.Jamdar, J.)