

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

WRIT PETITION NO.7384 OF 2015

Lakhan Channa Kanojia alias Pardeshi

.. Petitioner

Versus

Smt. Pushpa Tanajirao Kadambande and others

.. Respondents

Mr. V. V. Pai i/by Mr. Jagdishkumar Gupta, for the Petitioner.

Mrs. R. S. Gulekar, Section Officer of Court Receiver present.

CORAM : R.M. SAVANT, J.

DATE : 24th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 06.05.2015 passed by the Appellate Bench of the Small Causes Court, by which order the Revision Application filed by the Petitioner being No.239 of 2014 came to be rejected and resultantly, the order dated 08.05.2014 passed below Exh.36 in RAD Suit No.647 of 1994 came to be confirmed.

2. The Petitioner herein is the original Plaintiff who has filed the suit in question being RAD Suit No.647 of 1994 for a declaration of tenancy in respect of the suit premises being Flat No.31, on the ground floor of a building known as "Perohin" now known as "Ram Niwas", Sir

Pochkhanwala Road, Worli, Mumbai-400 018. The said suit premises is of the ownership of the Respondent No.3 company who is the Defendant No.3 to the suit. It seems that there are inter-se disputes between the Directors of the company, as consequence of which one of the Directors one Naina Kamani filed the suit in this Court being No.2429 of 1997 in respect of the properties of the said company. In the said suit, the Court Receiver has been appointed and the Petitioner was appointed as the agent of the Court Receiver on the payment of royalty which was fixed at Rs.30,000/- per month and enhanced to Rs.60,000/- per month. On the Petitioner coming default in payment of the said royalty that possession of the said premises came to be taken from the Petitioner. As indicated above, the Petitioner has filed the RAD suit for a declaration that he is a tenant in respect of the said property. In view of the fact that a suit concerning the said property was also pending in this Court being said Suit No.2429 of 1997. The Petitioner had filed an application in the said suit for being permitted to array the Court Receiver as a party Defendant to the said RAD suit in view of the fact that the Court Receiver was appointed in the suit filed by the said Naina Kamani Director of the Respondent No.3 landlord by this Court. The said application filed by the Petitioner came to be allowed by a Learned Single Judge of this Court by order dated 11.07.2013 in Judges Order No.68 of 2013 in Notice of Motion No.2438 of

997 in Suit No.2429 of 1997. It appears that the issue as regards the payment of royalty had reached the Division Bench of this Court. The Division Bench of this Court comprising of their Lordships Shri. H. L. Gokhale and Dr. D. Y. Chandrachud, JJ, (as their Lordships then were) passed an order that the Petitioner would be entitled to refund of royalty minus the rent if the Petitioner ultimately succeeds. The Petitioner therefore filed the instant application being Interim Notice No.36 of 2013 for amendment of the plaint to array the Court Receiver as a party Defendant to the suit and to bring the subsequent facts on record as regards payment of royalty by the Petitioner, the possession having been taken by the Respondents on account of default committed by the Petitioner. The said application has been partly allowed by the Trial Court by the impugned order. The amendment sought vide paragraphs 17(J) and 17(K) have not been allowed and also prayer clauses C-1 and C-2. The said amendments have not been allowed by the Trial Court on the ground that the said amendments based on which the reliefs vide prayer clauses C-1 and C-2 are sought cannot be granted by the Small Causes Court as the Petitioner has been dispossessed pursuant to an order passed in the suit by this Court on account of the non-payment of royalty. Save and except the aforesaid amendments which have been denied, rest of the amendments sought by the Petitioner have been allowed.

3. In my view, having regards to the reasons mentioned by the Trial Court for rejecting the amendment sought for incorporation of paragraphs 17(J) and 17(K) and prayer clauses C-1 and C-2, no fault can be found with the order passed by the Trial Court as the Trial Court on the prima-facie consideration of the said averments and the reliefs based thereon has come to a conclusion that the said reliefs cannot be granted in view of the fact that the dispossession of the Petitioner is pursuant to an order passed in the suit which is pending in this Court. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]