

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

WRIT PETITION NO. 11486 OF 2015

Nitaben Ramesh Choudhari

..Petitioner.

Vs

Bhagwan Nagnath Khilare

.. Respondent

Ms. Anjali Helekar i/b Neel G. Helekar, Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 18/08/2016**

PC:

1. Heard Ms. Anjali Helekar, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner/appellant in Appeal and original defendant in the suit, has challenged the order dated 29.9.2015 passed by the Appellate Court Bench of the Small causes Court Mumbai below Exhibit-15 in 2a Appeal No. 20 of 2012. By that order, the Appellate Court disposed of the application filed by the petitioner by observing that the prayer for remanding the case would be considered at the stage of final hearing of the appeal.
3. Suit instituted by the respondent was decreed by the trial Court on 30.3.2012. Aggrieved by that decision, the defendant preferred appeal before the appellate court. During the pendency

of the appeal, the defendant took out application dated 24.1.2014 for amending the written statement as also Appeal Memo. By order dated 1.8.2014, the Appellate Court allowed the application and permitted the defendant to carry out amendment in the written statement and appeal memo as per schedule annexed to the application subject to payment of costs.

4. The defendant thereafter filed application Exh.15, inter-alia, praying for remanding the matter to the trial Court and for directing the trial Court to frame issue as to whether the suit is maintainable for want of permission under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 from the Competent Authority in view of declaration of the suit property as a slum area vide Ordinance dated 13.11.1975 as also for leading evidence in support of the said issue.

5. By the impugned order the Appellate Court disposed of the application by observing that the prayer for remanding the case will be considered at the stage of final hearing of the appeal. In other words, the Appellate Court has not rejected the prayer made by the defendant for remanding the case and the said prayer will be considered at the time of final hearing of the appeal. In view thereof, I do not find that any case is made out for interfering with the impugned order. Petition fails and the

same is dismissed.

6. Ms. Helekar submitted that apart from prayer for remanding the matter to the trial Court, the defendant also prayed for permission for leading evidence by the parties. She, therefore, submits that the defendants will file separate application under Order 41, Rule 27 of CP.C. for leading additional evidence. If such application is made, the appellate Court will decide the same on its own merits and in accordance with law uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)