

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1308 OF 2014**

**Rajesh Ganpat More**

**..Petitioner**

**Vs.**

**Pandurang Sitaram Khanolkar & Ors**

**..Respondents**

**Mr. Onkar Gume a/w Ms Nisha Shah a/w Mr. Bhojraj Baral a/w Mr. Sagar  
Dusane i/b Mr. Kalpesh Joshi for the Petitioner  
Mr. S. R. Jaiswal for the Respondents**

**CORAM : R. M. SAVANT, J.**

**DATE : 8<sup>th</sup> JANUARY, 2016**

**P.C.**

1           The Writ Jurisdiction of this Court is invoked against the judgment and order dated 20-2-2013 passed by the Appellate Bench of the Small Causes Court by which order the Appeal being No.2 of 2013 came to be dismissed and resultantly the judgment and decree dated 29-2-2012 passed by the Trial Court i.e. is the Learned Judge of the Small Causes Court, Mumbai in R.A.E. & R Suit No.603/1029 of 2001, came to be confirmed.

2           The Suit in question is based on the notice issued by the Plaintiffs to the Defendant by which notice the Plaintiffs demanded the arrears of rent. The Defendant replied to the said notice and denied the title of the Plaintiffs. This resulted in the Plaintiffs filing the Suit in question for possession on the ground of default and also on the ground of denial of title of the Plaintiffs. The

Defendant i.e. the Petitioner herein belatedly filed his Written Statement. The matter reached the stage of cross-examination of the Plaintiffs. However, inspite of numerous opportunities given, which dates have been reflected in the orders passed by the courts below, the Defendants did not cross-examine the Plaintiffs. The cross-examination of the Plaintiffs accordingly came to be closed by the Trial Court and the matter was fixed for evidence of the Defendant but the Defendant did not adduce any evidence. Hence the case of the Plaintiffs was accepted by the Trial Court. The Trial Court recorded a finding as regards the arrears of rent. The Trial Court also recorded a finding that the Suit was maintainable as the notice declaring the property as slum was set aside. The Trial Court deemed it appropriate to pass a decree of eviction as the Defendant had denied the title of the Plaintiffs which the Trial Court held was against the conditions of tenancy. The Trial Court held that though the denial of title is not a ground under Section 16, the same entitles the landlord to file a Suit under Section 15 of the Maharashtra Rent Control Act. The Trial Court accordingly decreed the Suit by Judgment and Order dated 29-2-2012.

3           The Defendant carried the matter in Appeal by way of Appeal No.2 of 2013. The Appellate Bench of the Small Causes Court has confirmed the findings recorded by the Trial Court on each of the aspects namely whether the decree was required to be set aside on the ground that the Defendant had not cross-examined the Plaintiffs, whether there was a relationship of landlord and

tenant, whether the tenancy has been purportedly terminated and whether the Defendant has committed default in payment of rent and whether the Defendant by denying the title of the Plaintiffs over the suit premises has committed a breach of the tenancy conditions. The Appellate Bench of the Small Causes Court has thereby affirmed the findings of fact recorded by the Trial Court on the issues as above and has also answered the issue as regard maintainability of the Suit on account of the property being notified as a slum.

4           It is also required to be noted that pursuant to the decree passed in the Suit in question the Plaintiffs have already obtained possession of the suit premises in execution. In the light of the concurrent orders passed by the courts below as also the aforesaid fact, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**