

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 494 OF 2017**

IN

WRIT PETITION NO. 11733 OF 2016

Mr. Raman Dungar Patel

..Applicant.

Vs

Estate Officer, Office of Post
Master General, Mumbai Region

.. Respondent

Mr. Ishwar Ahuja i/b Thakordas & Madgavkar, Advocates for
Applicant.

**CORAM : R.G.KETKAR,J.
DATE : 01/03/2017**

PC:

1. Nor on Board. At the request of Mr Ahuja, taken up in production board. Heard Mr. Ishwar Ahuja, learned counsel for the applicant.
2. By this Application, the applicant has, inter alia, prayed for (a) recalling order dated 9.12.2016 passed in Writ Petition No. 11733 of 2016; (b) for direction to the respondent to produce certified extract and records in respect of the portion of property in possession of the applicant wherefrom he is running a tea stall; (c) for injunction restraining the respondent from taking any further steps pursuant thereto pending the hearing and final disposal of the application.
3. In support of this application, Mr. Ahuja submitted that by order dated 9.12.2016, Writ Petition was disposed of and time upto 28.2.2017 to vacate the suit premises was given. He

submitted that this civil application is filed on 27.2.2017 and was mentioned before this Court. Accordingly, today's production was granted. However, in the meantime in the morning the respondent has demolished the tea stall of the applicant and the applicant has virtually come on the street. He submitted that though there was no order of demolition of the tea stall, the respondent has demolished the tea stall. He, therefore, submitted that the order dated 9.12.2016 deserves to be recalled, thereby, restoring the possession of the applicant. In any case, if the Court is not inclined to grant this relief, the respondent may be prohibited from putting any compound wall on the portion of the property in possession of the applicant.

4. I have considered the submissions advanced by Mr. Ahuja. I have also perused the material on record. Writ Petition No.11733 of 2016 was instituted challenging the order dated 28.4.2016 passed by Estate Officer and APMG (MR), Mumbai as also the Judgment and order dated 17.9.2016 passed by the learned Principal Judge of City Civil Court at Bombay in Misc. Appeal No.38 of 2016. By this order, the authorities below ordered the applicant to remove the tea/snacks stall erected in the premises of Bandra West Post Office Building.

5. After arguing the petition for quite some time, upon instructions of the applicant who was present in the Court, a statement was made that the applicant will not press the petition

if time upto 28.2.2017 to vacate the suit premises is given. The applicant was also directed to file undertaking within two weeks incorporating therein the conditions stipulated in paragraph 4 of the order. The undertaking is filed on 20.12.2016.

6. By the present application, the applicant has prayed for recalling the order dated 9.12.2016. I do not find any case is made out for recalling the order, more so when after arguing the petition for quite some time in the presence of the applicant a statement was made that he is not pressing the petition. Accordingly, photocopy of Pan card of the applicant was taken on record. It is only because of the assurance on behalf of the applicant that he will hand over possession by 28.2.2017, time to vacate was given upto 28.2.2017. At the same time, the submission on behalf of the respondent that because of the tea-stall of the applicant the Corporation was not issuing Occupation Certificate and they have held up issuing Occupancy Certificate, was noted. It was also clarified that the Corporation will not withhold the occupancy certificate on the ground of non-removal of tea/snacks stall. Thus, because of the tea/snacks stall of the applicant, the respondent was not getting occupation certificate.

7. As the applicant did not have any interest in the property, the authorities below have passed eviction order which was challenged by the applicant by filing Petition which was disposed of as not pressed. In view thereof, no relief can be granted

to the applicant. Accordingly the Application fails and the same is dismissed. Liberty is reserved to the applicant to approach the respondent for collecting articles, if any, that were lying in the tea stall.

(R.G.KETKAR, J.)