

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5422 OF 2015

Edward Koilpichai Nadar

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. A.K. Tripathi, a/w Jayraj S., for the Petitioner.

Mr. A.R. Metkari, AGP, for the Respondent No. 1.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. The learned Counsel seeks leave to amend to delete State of Maharashtra from the array of Respondents. Amendment to be carried out forthwith.

2. The Suit bearing No. 1690 of 2011 has been filed by the Respondent-landlord for eviction of the Petitioner-Defendant. In this Suit an Application has been taken out by the Petitioner under Section 9A of the Code of Civil Procedure, 1908 in respect of jurisdiction of the Small Causes Court. It is the case of the Petitioner that the area has declared as slum. In spite of producing cogent material, the Respondent-landlord has denied the same and therefore, witness summons is necessary to be

issued to the concerned authority who has issued the documents. This request has been rejected by the learned Small Causes Court, Judge and Revision Application filed by the Petitioner has been dismissed by the Appellate Bench of the Small Causes Court holding that substantive rights of the Petitioner are not affected.

3. If the substantive rights of the Petitioner are not affected and the Revision is not maintainable, the same position *per force* applies to exercise of power under Article 227 of the Constitution of India. As far as issuance of witness summons to the concerned authority is concerned, the Petitioner has relied upon the documents which are stated to be official documents. Therefore, the learned Judge has rightly held that such issuance of witness summons to public authority is not warranted. However, if during the course of decision of the Application under Section 9A of the Code of Civil Procedure, 1908, if the learned Small Causes Court, Judge finds that for correct and appropriate adjudication, the authority be summoned, then it will be open to the learned Small Causes Court, Judge to take the said view. Giving this discretion to the learned Small Causes Court, Judge, at the time of hearing of the Application under Section 9A of the Code of Civil Procedure, 1908, the Writ Petition is disposed of.

[N.M. JAMDAR, J.]