

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

WRIT PETITION NO. 6192 OF 2017

Ms. Kanan Farshuram Raval	...Petitioner
<i>Versus</i>	
Hasmukh Kirtilal Shah And Ors.	...Respondents

Mr.Jayesh Bhatt for the Petitioner.

Mr.Reshant Shah i/by Lex Conseiller for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 29th AUGUST 2017

P.C.

1. The challenge in this petition is to the order dated 27th March 2017 made by the Appellate Bench of the Small Causes Court declining to interfere with the order dated 21st April 2016 made by the Small Causes Court directing the petitioner (Original defendant) from granting inspection of the suit premises to the respondents who claims to be a landlord in respect of the suit premises.

2. The Appellate Bench has held that the Appeal does not lie against the order dated 21st April 2016. Mr.Bhatt submits that the reasoning of the Appellate Bench is erroneous and an Appeal was very much maintainable since the order dated 21st April 2016

made by the Small Causes Court is relatable to exercise of powers under Section 28 of the Maharashtra Rent Control Act, 1999. He further submits that in this case, the Small Causes Court without recording even a *prima-facie* finding as to whether there exists landlord-tenant relationship between the parties, was not entitled to order inspection of premises in terms of Section 28 of the said Act. Mr.Bhatt submits that inspection of premises can be permitted only to a landlord and not to a person who claims to be a landlord without any material in support thereof. For all these reasons Mr.Bhatt submits that the impugned order is liable to be set aside.

3. Mr.Reshant Shah, the learned counsel for the respondents had defended the impugned order. He submits that no Appeal was maintainable and in any case there was ample material on record to establish existence of landlord-tenant relationship. He submits that this petition may be dismissed with exemplary costs.

4. In this case, there is no necessity to go into the issue of maintainability of the Appeal before the Appellate Bench since, I am satisfied that the order dated 21st April 2016 made by the Small Causes Court and which was sought to be appealed against before the Appellate Bench, warrants no interference.

5. Mr.Bhatt, is not right in his submission as regards the absence of any *prima-facie* findings in relation to the landlord tenant relationship. The Small Causes Court, by separate order dated 10th December 2014 had granted several interim reliefs to the respondent-plaintiff. In the said order, *prima-facie* findings as regards landlord-tenancy relationship is arrived at and recorded. The order dated 10th December 2014 was carried in appeal by the petitioner vide Miscellaneous Appeal No.183/2015 before the Appellate Bench. The Appeal was dismissed by detailed order dated 27th March 2017, thereby confirming the *prima-facie* findings. If for this reason, no separate finding to this effect may have been specifically recorded by the Small Causes Court, it cannot be said that the Small Causes Court has not applied its mind to the *prima-facie* existence of such relationship. Section 28 of the said act provides that the landlord shall be entitled to inspect the premises let or after giving on license after giving proper notices to the tenant, licensees, occupier.

6. However, it is made clear that the observations in the order dated 21st April 2016 as well as the in the present order are only *prima-facie*. The observations therefore, need not influence the

Small Causes Court in deciding the matter on merits. All contentions, including the contention as regards the existence of landlord-tenant relationship is therefore kept open to be decided by the Small Causes Court on its own merits and in accordance with law.

7. Accordingly, there is no case is made out to entertain the present petition under Article 227 of the Constitution of India. The petitioner to pay cost assessed at Rs.10,000/- to the respondents within a period of four weeks from today.

8. At this stage the learned counsel for the respondent states that cost of Rs.10,000/- may be paid to the legal service authority. Accordingly, costs are directed to be paid to the legal service authority.

(M. S. SONAK, J.)