

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

CIVIL REVISION APPLICATION NO. 456 OF 2009

Manohar Anant Satdekar and Anr. ...Applicants

Versus

The Western Railway and Anr. ...Respondents

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Mr.Atul Damle, Senior Advocate a/w. Ms.Radhika Samant i/b. Mr. Datta Mane for the Applicants.
Mr.Suresh Kumar a/w.Ms.Rohini Wagh for the Respondents.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 20, 2017**

P.C. :

1. This Civil Revision Application is directed against the two orders i.e. the order dated 09.06.2009 passed by respondent no.2, i.e. the Competent Authority, Estate Officer & Divisional Engineer (Estate), Mumbai Central Western Railway, Mumbai in Suit No. PPE/188/BA/2006 and the order dated 28.07.2009 passed by the learned City Civil Judge, Greater Mumbai in Misc. Appeal No. 137 of 2009 whereby the learned Judge of the City Civil Court held that appeal against the order passed under Section 5A of the Public Premises Eviction Act, 1971 (for short, hereinafter referred to as 'the Act') is

maintainable under Section 9 of the Act. However, the present appeal is not in respect of an order under Section 5A of the Act.

2. Heard learned senior counsel for the applicants so also learned counsel for the respondents.

3. It is rightly pointed out by the learned counsel for the respondents that under Section 9 of the Act, not all but certain orders can be challenged. The orders passed under Section 5A of the Act are not covered under Section 9A of the Act.

4. The learned counsel for the applicants submits that earlier the applicants filed Writ Petition No. 6886 of 2009. However, the said Writ Petition was withdrawn by order dated 26.08.2009 with liberty to file a Civil Revision Application and, therefore, the present Civil Revision Application is filed to challenge both the orders. He further submits that he wants to withdraw the challenge given to that order in Civil Revision Application and seeks liberty to file a separate Writ Petition. He further submits that this Court, while admitting the Civil Revision Application, granted interim relief vide order dated 28.04.2011 and the said interim relief be continued.

5. Perused the order dated 28.07.2009 passed by the learned City

Civil Judge. The learned Judge has taken a view that Section 5 (A) of the Act is not mentioned in Section 9 of the Act and hence, the appeal is not maintainable. However, Section 5A of the Act is not incorporated and hence the order passed by the learned Judge of the City Civil Court is hereby maintained. The Civil Revision Application is not maintainable against the order passed by the Estate Officer under Section 5A of the Act. The applicants are allowed to withdraw this Civil Revision Application with liberty as prayed for.

6. Interim relief granted earlier to continue for a period of four weeks from today.

7. In view thereof, Civil Revision Application is disposed of.

(MRIDULA BHATKAR, J.)