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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.618 OF 2016

Premji Tapu Makwana

..Petitioner.

V/s.

M/s. Ranjana Construction Ltd. & Ors.

..Respondents.

Ms.Anita Dwivedi for the Petitioner.

CORAM : N.M.Jamdar, J.

DATED : 9 February, 2017

ORAL ORDER

By this petition, the Petitioner has challenged the order passed by the learned Small Cause Court Judge in Marji Application No.265/2015 in R.A.D. Suit No.603/2012 and order passed in Revision Application No.16/2015 by the Appellate Bench of the Small Cause Court, Mumbai.

2. R.A.D. Suit No.265/2012 is instituted by the Petitioner. In this suit, an application for injunction was taken out by the Petitioner to restrain the Respondents from interfering with his

possession and certain other ancillary reliefs. The learned Small Cause Court Judge had granted injunction. Thereafter, a Marji Application No.265/2012 was filed by the Petitioner under the provisions of Order 39 Rule 2-A of the Code of Civil Procedure seeking punitive action against the Respondents on the ground that after an order of injunction was passed, the Respondents have demolished the building. The Respondents appeared and contended that the suit premises were already in extremely dilapidated condition, it had already partly collapsed and thereafter, due to heavy rains, the premises fully collapsed. These contentions of the Respondents was accepted by the learned Small Cause Court Judge and the Appellate Bench. Both the Courts accordingly held that case was not made out to proceed under Order 39 Rule 2A of the Code of Civil Procedure.

3. Though the learned counsel for the Petitioner has sought to urge various aspects, such as in that particular year rains were not that heavy and that the premises were in sound condition, it is not possible to re-appreciate the evidence under Article 227 of the Constitution of India. The only question that arises is whether the view taken by both the Courts is a possible view. It is not that there is no material to support the view taken by both the Courts. Notices issued by the authorities indicating that the building was not safe for human habitation in the year 2012 itself, are on record. Even while granting injunction, a specific stand was taken by the Respondents

that the suit premises are likely to collapse any time and they are dangerous to live. Therefore, it is not by way of an after-thought that the Respondents have taken this stand. Therefore, it cannot be said that finding of fact rendered by both the Courts is an impossible view to be taken.

4. The suit filed by the Petitioner is pending. If there are other reliefs that the Petitioner seeks to obtain, it is open to the Petitioner to take out an appropriate application in the pending suit. The writ petition is accordingly disposed off.

(N.M.Jamdar, J.)