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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11440 OF 2017**

Ajay Alias Madhav Devidas Gosavi ...Petitioner
Versus
Maharashtra State Employees Cultural Society & ...Respondents
Ors

Mr Chaitanya Nikte, *with Madhura Deshmukh, for the Petitioner.*
Mr AR Metkari, *AGP, for Respondents Nos. 2 to 6, 10, 12 to 14.*

CORAM: G.S. PATEL, J
DATED: 6th November 2017

PC:-

1. Heard. The impugned order calls for no interference. It is an order dated 6th June 2017 passed on the petitioner's application below Exhibit 168 to strike out the defence of the respondent for having committed breach of an earlier order dated 25th November 2011. According to the petitioner, he was forcibly dispossessed pending the appeal. The Trial Court found that except for a bald statement by the plaintiff there was no evidence to show — and this is important — forcible dispossession without the due process of law. In the reply to the application in paragraph 5 the respondent denied any forcible dispossession but said that it was plaintiff/petitioner who had handed over possession on 31st December 2009.

2. All that the Trial Court did was to say that the question of possession and dispossession was not one that could be decided without evidence being led. On the sole contention of the plaintiff that he was allegedly forcibly dispossessed the defence of the defendant could not be struck off.

3. The impugned order is unimpeachable. It calls for no interference. The finding of the Trial Court that evidence is necessary is undoubtedly correct. Merely on an averment or an allegation of a due admission by non-traverse the defendant cannot be non-suited by having its defence struck off.

4. The writ petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J)