

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

WRIT PETITION NO. 776 OF 1998

Shri Satishchandra Kasturilal Gosein	...	Petitioner
V/s.		
Shri K.G. Durham	...	Respondent

- Mr. S.G. Karandikar for the Petitioner.
- None for the Respondent.

CORAM : G.S. KULKARNI, J.

DATED : 20th July, 2017.

PER COURT :

1. This is a petition of the landlord who succeeded before the trial Court in an eviction suit filed by him against the respondent-tenant. The decree in the petitioner's suit came to be reversed by the learned appellate Judge on the ground that there was an agreement between the petitioner-landlord and the respondent-tenant for sale of the suit premises accepting the respondent's case that the amount paid as rent was infact an amount paid towards part consideration towards the sale price of the suit premises. The learned appellate Judge held that there was no relationship of a landlord and tenant between the petitioner and the respondent.
2. Mr. Karandikar, learned counsel for the petitioner submits that, the respondent had also filed Special Suit No. 11 of 1992 seeking specific performance of the agreement alleged to be executed for sale of the suit

premises. Mr. Karandikar submits that he is not aware of the outcome of the said proceedings. He however submits that, in case the respondent has failed in the said suit only in that event the petitioner can prosecute this petition and thus, the petition would not require adjudication with this uncertainty. The suggestion of Mr. Karandikar is fair and quite acceptable. If the respondent has succeeded in the suit which was filed by him seeking specific performance, then obviously, the cause for the petitioner to prosecute this petition would not survive. This petition is accordingly disposed off permitting the petitioner to revive this petition if the respondents has failed in Special Suit No. 11 of 1992 and secure title to the suit premises. No costs.

(G.S. KULKARNI, J.)