

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO. 28336 OF 2017

Bank of Baroda	...Petitioner
<i>Versus</i>	
Taralaxmi Kantilal Shah	...Respondent

Mr VY Sanglikar, *for the Petitioner.*
Mr RD Soni, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 1st November 2017

PC:-

1. **Rule.** Mr Soni waives service for the Respondent. By consent, rule made returnable forthwith and the matter is taken up forthwith for hearing and final disposal.

2. The challenge is to an order dated 19th September 2017 by the Trial Court on an application numbered as Exhibit-62 in the Respondent's TE Suit No.171/2009 of 2012, a copy of which is annexed at pages 188 to 191. The immediate history to this order is that the application that was decided was filed pursuant to directions passed by this court (RG Ketkar, J) on 5th October 2016 in Writ Petition No.2116 of 2016. The dispute pertains to the premises that were let out at some point to the present Petitioner,

the Defendant in the suit. By the order of 5th October 2016, this Court said that evidence was necessary to determine whether it was the Defendant that was at fault for not delivering possession or whether it was the Plaintiff who was responsible and at fault for not taking possession. Evidence was required in this regard.

3. It seems in her application pursuant to these directions, the Plaintiff attempted to examine an architect or valuer, presumably to assess or justify her claim that there was extensive damage to the premises and also in support of her claim for mesne profits. The impugned order notes the High Court order, but then goes on to say, for reasons I am wholly unable to understand, that even though the architect's evidence was irrelevant to the question of who was responsible in regard to the possession issue, that evidence of the architect should be allowed and be taken on file. It appears that the only reason that guided the Trial Court was that the Defendant did not oppose the filing of the architect's evidence. The Court also said that it is for the Court to consider what part of the evidence of the Architect is relevant to decide "the said issue".

4. Indeed it is not. The evidence of the architect is wholly irrelevant on the question of ascertaining where lies the fault in regard to possession. Even Mr Soni does not dispute this today. His only submission is that the evidence of the architect is necessary for the separate application in regard to the claim for mesne profits or damages. There is no doubt about that either, and for his part Mr Sanglikar does not contest that the evidence of the architect may be relevant to the issue of damages, subject to its evidentiary value

after cross-examination. He maintains that it is completely irrelevant to the question of liability in regard to possession.

5. I believe that Mr Sanglikar is correct in his submission. The Trial Court could not have allowed in evidence the architect's evidence. That is not only irrelevant but is prohibited by this Court's order of 5th October 2016.

6. In the result the Petition succeeds. Rule is made absolute. The impugned order is quashed and set aside. The Defendant's application Exhibit-62 is made absolute.

7. The Plaintiff's application for determining who is at fault in regard to possession will continue on the basis of the Plaintiff's evidence and the Defendant's evidence. The Plaintiff is at liberty to file the evidence of the Architect in an appropriate proceedings either already filed or to be filed at an appropriate stage to substantiate her claim for mesne profits, or damages, or both.

8. The Petition is disposed of in these terms. There will be no order as to costs.

9. The Trial Court will act on an authenticated copy of this order.

(G. S. PATEL, J.)