

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11746 OF 2017

The Sonawala Company Private Limited

.. Petitioner

Vs.

Shri Kashinath D. Khote & Ors.

.. Respondents

Mr.Rajesh S. Patil for petitioner.

None for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 14TH NOVEMBER 2017

P.C.

1 This writ petition is filed under Article 227 of the Constitution of India impugning an order dated 15th September 2017 passed by the Appellate Bench of the Small Causes Court, Mumbai.

Petitioner has filed an Eviction Suit against respondents. None of the respondents have appeared in this matter in this Court though counsel for petitioner states respondent nos. 2 to 4 have been served. So far as respondent no.1 is concerned, counsel states that it is not clear whether respondent no.1 is alive or is dead. Petitioner has filed R.A.E. Suit No. 1135/1829 of 2012 before the Small Causes Court of Bombay for eviction of respondent from suit premises being Block/Flat bearing No.C-34, situate

on 1st floor, Sonawala Building No.7, Estate, Sonawala Compound, Tardeo Mumbai 400007 against respondents. It is the case of petitioner that respondent was the tenant and respondent nos.2 to 3 are illegal occupants.

2 When the bailiff of Sheriff went to serve the writ of summons, respondent no.2, who was present in the premises, informed the bailiff that respondent no.1 died long ago but respondent no.2 did not have any evidence to that effect and was also unable to state when respondent no.1 died. Respondent nos.2 to 4 have filed written statement and it is their case that their families, going back to the grand father of respondent no.2, has been in occupation since 1946. Curiously, in the written statement, they have also not denied the fact that respondent no.1 was the tenant. Respondent nos.2 to 4 have listed various points and documents in the written statement to justify the fact that their family has been in occupation since 1946. Respondent nos.2 to 4 have not filed copies of those documents or have provided inspection of those documents to petitioner. An application made by petitioner to the Trial Court to direct respondent nos.2 to 4 to produce the documents has not been considered favourably. Against that order, Revision Application was filed and the order passed in the Revision Application is the order that is impugned in this petition. The Appellate Court has given a detailed judgment and has refused to entertain the

Revision Application on the ground that at the time of trial, if respondent nos.2 to 4 did not prove their case by producing the documents relied upon in the written statement, consequences will follow.

3 In my view, that position cannot be disputed. The Code of Civil Procedure has laid down the procedure for production of documents by parties to the suit and consequences for non-production of the same has also been provided. It is the duty of plaintiff and defendant in any suit to produce such documents on which they rely at the appropriate stage failing which they have to face the legal consequences.

4 The Court at the appropriate stage, will investigate the statements made by the parties in their respective pleadings. If parties do not provide the documents on which they rely upon or the documents produced are not received in evidence being not in compliance with the provision of the Evidence Act, consequences will follow. This is the basis on which the Revision Application has been dismissed. I see no reason to find fault with the view taken by the Appellate Bench in the Revision Application.

5 Writ Petition dismissed. No order as to costs.

It is clarified that the rights and contentions of petitioner herein, to raise such points as necessary at the appropriate stage, is kept open and the trial Court will consider the same on its own merits.

(K.R. SHRIRAM, J.)