

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

WRIT PETITION STAMP NO.35643 OF 2016

Shalimar Paints Limtied : Petitioner.
versus
State of Maharashtra and anr. : Respondents.

**Mr. Akshay Shah a/w Mr. Jeetendra Ranawat i/by Mr. Waquar Ahmad for
the Petitioner.**

Mr. S D Rayrikar, AGP for the Respondent No.1.

Mr. Joseph Fernandes for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 13th January 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 22/11/2016 passed by the Estate Officer rejecting the application dated 24/03/2014 filed by the Petitioner and directing the Respondent No.2 herein to make available the second witness Mr. Dharmadikari for cross examination on 08/12/2016 as also the order dated 20/12/2016 closing the cross examination of the witness of the Respondent No.2 on the ground that though the opportunity was given, the Petitioner did not avail of the said opportunity and since the matter is time bound by this Court, no further adjournment could be granted to the Petitioner. It was made clear in the said order that no adjournment would be granted on any count.

2 The said application dated 24/03/2014 sought relief of dismissal

of the application for damages filed by the Respondent No.2 for the unauthorized use of the premises by the Petitioner. In so far as the application dated 24/03/2014 is concerned, the same has been rejected on the ground that the possession of the premises in question was already handed over on 28/08/2009 and the challenge to the eviction order has been turned down and that only in so far as the issue of damages is concerned, that the matter was remanded back to the Estate Officer to denovo consider the said issue by a learned Single Judge of this court by the order dated 01/07/2013 passed in Writ Petition No.761 of 2011.

3 The applicability of the judgment of the Apex court in *Dr.Suhas H. Pophale vs Oriental Insurance Company Limited and its Estate Officer* reported in *(2014) 4 SCC 657* was negated by the Estate Officer on the ground that the possession of the premises being already handed over on 28/08/2009, there is no question of the applicability of the said judgment. Hence no case for interference in so far as the order passed on the application filed on 24/03/2014 by the Petitioner is concerned.

4 In so far as the opportunity to cross examine the witness of the Respondent No.2 is concerned, no doubt the proceedings are time bound by the orders passed by this Court. However, the time to conclude the proceedings as per the last extension granted is to come to an end on

17/01/2017. The Estate Officer has kept the matter for evidence of the Petitioner on 25/01/2017. In my view, the interest of justice would be served that before the Petitioner commences leading its evidence, the Petitioner is given final opportunity to cross examine the witness Mr. Dharmadikari i.e. the valuer on 25/01/2017. The said witness would therefore be kept present by the Respondent No.2 before the Estate Officer on the said day. The Estate Officer is directed to permit the Petitioner to cross examine the said witness on 25/01/2017 or on any other day as per his convenience. The learned counsel appearing on behalf of the Petitioner states that the cross examination would be completed within maximum period of two days which may be consecutive days or as per the convenience of the Estate Officer. The learned counsel further states that the Petitioner would also lead evidence and conclude the same expeditiously having regard to the fact that the matter is time bound. Statement accepted.

5 If the Petitioner does not avail of the opportunity on 25/01/2017 or on any other date as fixed by the Estate Officer, then the Estate Officer would be free to proceed with the matter relating to the adjudication of damages in accordance with law.

6 The learned counsel appearing for the parties i.e. Shri Fernandes appearing for the Respondent No.2 who has invoked the provisions of the

Public Premises Eviction Act and, Shri Shah appearing for the original occupant i.e. the Petitioner herein make a joint request for extension of time for the Estate Officer to dispose of the proceedings. time to dispose of the proceedings is accordingly extended up to 20/02/2017. With the aforesaid directions the above Writ Petition is disposed of.

[R.M.SAVANT, J]