

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4180 OF 2018

Mr. Annie Rocha Raj	]	Petitioner
Vs.		
The State of Maharashtra & Anr.	]	Respondents

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Mr. J.M. D'Silva, for petitioner.
Mr. A.R. Metkari, A.G.P, for respondent No.1.
Ms. Pramila S. Thakur, respondent No.2 in person.

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CORAM : R.G. KETKAR, J.

DATE : 11TH APRIL, 2018.

P.C.

Heard Mr. D'Silva, learned Counsel for the petitioner and Mr. Metkari, learned A.G.P, for respondent No.1 and Ms. Thakur, respondent No.2 in person.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as “defendant” has challenged the order dated 5th February, 2018 passed by the learned Chief Judge of the Court of Small Causes at Mumbai in Transfer Application No. 358 of 2017 in R.A.E. Suit No.1422 of 2015. By that order, the learned Chief Judge rejected the transfer application filed by the petitioner, hereinafter referred to as “defendant” for transferring the suit from Court Room No.23 to another Court as may deem fit and proper.

3. In support of this Petition, Mr. D'Silva has taken me through the transfer application made in November, 2017 and in particular paragraphs 3

and 4. He has also invited my attention to the ticket dated 6th October, 2017 from Dadar to TIVIAM (Goa) and return ticket dated 9th October, 2017 from to TIVIAM (Goa) to Dadar. He submitted that he was not in Mumbai. The order below Exhibit 17 was passed on 9th October, 2017. Though he was out of Mumbai, the learned Judge presiding over Court Room No. 23 showed his appearance. He also invited my attention to the order dated 19th July, 2010 passed by the learned Judge of the City Civil Court in Suit No. 25 of 1999 refusing to try the suit on the ground that the plaintiff has made attempt to influence the Court. Having regard to the conduct of the plaintiff, the learned Chief Judge was not justified in rejecting the application. He invited my attention to the letter dated 6th November, 2017 addressed on behalf of the defendant to the plaintiff setting out therein that on 9th October, 2017 when the matter was called out, it was informed to the Court that Advocate J.M. D'Silva was out of Mumbai and the Judicial Clerk informed her at 11.30 a.m that next date was 27th November, 2017. He, therefore, submitted that learned Judge adjourned the hearing of Exhibit 17 to 27th November, 2017. The defendant, therefore, does not expect justice from the Judge presiding over Court Room No.23. He, therefore, submitted that the learned Chief Judge committed error in rejecting the application. On the other hand, Ms. Thakur supported the impugned order.

4. I have considered rival submissions of learned Counsel for the parties. I have also perused the material on record. In paragraph 3 of the impugned order, the learned Chief Judge considered the reply filed by the plaintiff to the transfer application. Junior Advocate of Mr. D'Silva was present before the Court and after hearing him, the learned Judge passed order below Exhibit 17 on 9th October, 2017. Mr. D'Silva submitted that Junior Advocate was present in the Court and did not argue the matter. It is not in dispute that the plaintiff made application Exhibit 17 for inspection of the suit premises

through her Architect in respect of alleged additions and alterations of the suit premises. The defendant has filed reply Exhibit 18 opposing that application. The learned trial Judge relied on the decision of **Suresh Manoharlal Juman****i Vs. Aasia Management and Consultancy Pvt. Ltd., 2014 (1) Bom. C.R. 88** wherein it was observed that landlord can take surveyors alongwith him for measurement of area. The word “inspection” will have to be interpreted considering the purpose of inspection.

5. It is not in dispute that the suit is instituted under the provisions of the Maharashtra Rent Control Act, 1999 and section 28 is introduced in this Act which was not in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Apart from that, Mr. D'Silva fairly submitted that he is not challenging the order dated 9th October, 2017. After perusing the impugned order which records that the learned Chief Judge has called the report from the concerned Judicial Officer and after perusing the report, wherein it was stated that no application for adjournment was filed on the ground of absence of Advocate for the defendant, the learned Chief Judge did not find bias or mala fide in the act of the Judicial Officer. If the junior Advocate was instructed not to argue or to file application for adjournment, he would have done so.

6. For the reasons recorded in the impugned order, I do not find any error in the impugned order. No case is made out for exercising powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

[R.G. KETKAR, J.]