

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 3836 OF 2018

Jayesh Chinubhai Gandhi] Petitioner

Vs.

Freny Burjor Gimi & Ors.] Respondents

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Mr. Ashok Toraskar, for petitioner.

Mr. Shailendra S. Kanetkar, for Respondent No.1.

.....

CORAM : R.G. KETKAR, J.

DATE : 5TH APRIL, 2018.

P.C.

Heard Mr. Toraskar, learned Counsel for the petitioner and Mr. Kanetkar, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1' has challenged the judgment and order dated 5th February, 2018 passed by the Appellate Bench of Small Causes Court at Mumbai below Exhibit 7 in (A-1) Appeal No.172 of 2017. By that order, the Appellate Court allowed the application at Exhibit 7 filed by defendant No.1 and stayed eviction decree dated 7th March, 2017 passed by the trial Court in R.A.E. Suit No.222/333 of 2007, pending decision of the appeal, subject to condition of defendant No.1 depositing compensation @ Rs. 45,189/- per month from the date of decree. Defendant No.1 is directed to deposit arrears of compensation either in the lumpsum or in three monthly

installments from the date of the order. The Appellate Court also passed the order of investment of the amount so deposited.

3. After arguing the Petition for quite some time, Mr. Toraskar, on instructions of defendant No.1 who is present in the Court seeks permission to withdraw the Petition with liberty to file Review Petition before the Appellate Court along with valuation report. He has tendered photo copy of his Aadhaar Card which is taken on record and marked "X" for identification.

4. Mr. Kanetkar submitted that in case the Court is inclined to grant such liberty, all the contentions of the first respondent may be kept open.

5. In view thereof, on the motion made by Mr. Toraskar, the Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that grant of liberty shall not be construed as an expression of opinion on merits of the proposed application. All contentions of respondent No.1 including maintainability of Review Application are kept open. The Appellate Court will decide the application on its own merits and in accordance with law. Order accordingly.

[R.G. KETKAR, J.]