

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

WRIT PETITION NO. 3439 OF 2018

Kirit Murji Shah	...	Petitioner
V/s.		
Milan Laxmidas Samani & Anr.	...	Respondents

- Mr.Abhineet Pange i/b. Mr.Pranav D. Avhad for the Petitioner.
- Mr.Anil R. Mishra for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondents.

2] By this Writ Petition, the Petitioner is challenging the order dated 13th March 2018 passed by the City Civil Court, Mumbai, thereby dismissing draft Notice of Motion filed in S.C. Suit No. 649 of 2013.

3] The said Notice of Motion was filed by the present Petitioner, who is the Original Defendant before the trial Court, requesting to recall and set-aside the order dated 6th March 2018 and also for allowing him to file his affidavit in lieu of evidence.

4] Learned counsel for the Petitioner submits that the Petitioner is in jail and therefore, he could not lead the evidence in time as per the order passed by the trial Court.

5] It can be seen that on 7th December 2016 in the Special Leave to Appeal (C) No.26309 of 2015, the Hon'ble Supreme Court has passed following order :

“... .. However, in the interest of justice, we deem it fit and proper to request the concerned Court before which Special Civil Suit No.253/2013 and Special Civil Suit No.649 of 2013 are pending, that the same be decided expeditiously and in accordance with law, preferably within a period of one year from the date of receipt of this order.”

6] It is pertinent to note that, despite the order of the Hon'ble Supreme Court, the hearing of the suit could not be proceeded further and though the Petitioner has sought time from the trial Court on the ground that he will take steps for extension of time for disposal of the suit by submitting proper application before the Hon'ble Supreme Court, no such extension of time was sought.

7] In view thereof, the trial Court has already granted sufficient time to the Petitioner to file such affidavit in lieu of evidence

and proceed with the matter. The impugned order of the trial Court shows that the matter was kept for argument with consent of both the parties. In such situation, the trial Court has rightly rejected the Notice of Motion seeking recall of the order; especially having regard to the fact that the Petitioner is still in jail and the suit is for recovery of possession filed under Section 6 of the Specific Relief Act, which is required to be decided at the earliest.

8] Writ Petition therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]