

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

WRIT PETITION NO.7986 OF 2017

Shri vishwas Panditrao Jape

... Petitioner

Vs.

Shri Shrikant Bhagwan Phadnis
through his power of attorney holder
Mrs.Reshma Amir Honap

... Respondent

Mr.Telesh Dande i/b Telesh Dande & Associates for the Petitioner
Mr.A.P. Vanarse for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 9, 2018**

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally.
2. This Writ Petition filed under Article 227 of the Constitution of India is directed against the order dated 2.3.2017 passed below exhibit 91 in Civil Appeal No.553 of 2006 by the learned District Judge 18, Pune. The petitioner was the appellant before the District Court, who wanted the respondent to produce the original leave and licence agreement as according to him, it is the respondent to prove the status of the appellant as a tenant or

licensee. In the said application, alternatively, the prayer of drawing adverse inference is also made.

3. The learned Counsel for the petitioner relied on the order of this Court dated 23.3.2009 wherein this Court has framed two issues in respect of establishing the relationship between the parties as licensor and licensee or landlord and tenant and raised the issue of maintainability of the suit before the Small Causes Court, Pune. He submitted that pursuant to this order, evidence was tendered before the Small Causes Court. The suit filed by the respondent for bonafide requirement is decreed and the said judgment and decree is challenged by the present petitioner in appeal.

4. The learned Counsel submits that unless that agreement is produced by the landlord, it is not possible to proceed further as no relationship can be properly established. He submits that the learned appellate Court has not taken into account this factor and the order passed by the learned appellate Court under challenge, is to be set aside.

5. The learned Counsel for the respondent while opposing this petition has submitted that this issue can be argued and decided at the stage of the hearing of the appeal.

6. Perused the impugned order. The petitioner has moved the application for production of the documents at the end of the final hearing of the appeal. In view of the issues framed by this Court by order dated 23.3.2009, the parties have already tendered their respective evidence before the trial Court and, therefore, the appellate Court can decide the matter on the basis of the documentary and oral evidence, which is available before the Court. The appellate Court is also free to give any finding in respect of non-production of the document, if it thinks that it was to be produced by the respondents and accordingly the issue can be decided in accordance with law.

7. In view of the above, Writ petition is dismissed.

(MRIDULA BHATKAR, J.)