

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

WRIT PETITION NO. 5523 OF 2018

Shri. Chetan Kundandas Sewani ...Petitioner

Versus

Shri.Shankar Panjuma Soneja ...Respondent

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Mr.Girish R. Agrawal for the Petitioner.
Mr.P.D.Dalvi for the Respondent.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 26, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and decided at the stage of admission.
2. This Petition is directed against the order dated 12th March, 2018 passed by the learned Civil Judge, S.D., Kalyan thereby rejecting the application below exhibit 131 in Summary Suit No. 13 of 2007.
3. The petitioner, who is the original defendant, has moved an application under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the C.P.C.") for framing additional issue on

the maintainability of the Summary Suit for want of compliance under Order 37 Rule 3 of the C.P.C. The said application was rejected by the learned Judge of the trial Court. Hence, this Writ Petition.

4. The learned Counsel for the petitioner has submitted that it is mandatory on the part of the plaintiff i.e., respondent in the Summary Suit to comply with Order 37 Rule 3 of the C.P.C. There was no service in the nature of Form 4A as mentioned in Order 37 Rule 3 of the C.P.C.

5. The learned Counsel for the respondent opposed this Petition. He has submitted that the evidence of the plaintiff is over and the defendant has filed his evidence affidavit on 15th September, 2017 and additional evidence on 8th December, 2017.

6. The Summary Suit is pending since 2007. In Writ Petition (Stamp) No. 23103 of 2017, this Court by order dated 6th November, 2017 directed the learned Judge of the trial Court to expedite and dispose of the Summary Suit within a period of six months, however, the said period was over in June, 2018.

7. Heard submissions. Perused impugned order. The order dated 12th March, 2018 passed by the learned Civil Judge, S.D., Kalyan is found well reasoned and legal. The trial Court to proceed with the matter.

8. Hence, Writ Petition is dismissed. Rule is discharged

(MRIDULA BHATKAR, J.)