Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE JURISDICTION**

**WRIT PETITION NO. 6028 OF 2018**

Yogacharya Anandji ] Petitioner

Vs.

Jaihind Co-operative Housing Society Ltd. ]

and another ] Respondents

.....

Mr. S.M. Sabrad, for Petitioner.

.....

**CORAM : R.G. KETKAR, J.**

**DATE : 6TH JUNE, 2018.**

**P.C.**

Heard Mr. Sabrad, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and order dated 14th March, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra) in Exhibit 38 in Exhibit 18 in Appeal No.87 of 2004. By that order, the Appellate Court rejected the application Exhibit 38 made by the plaintiff for deciding application Exhibit 18 filed by the plaintiff under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 (for short 'C.P.C') first before deciding the appeal. Mr. Sabrad submitted that the plaintiff had filed application under Order-XLI, Rule-27 on 5th May, 2007 (Exhibit 18). on the same day, the Appellate Court passed following order;

> "Appellant to pay cost and get it numbered. Respondent to file reply, to be heard along with appeal".

In other words, the Appellate Court did not decide the application Exhibit 18 first before deciding the main appeal.

3. In view thereof, the plaintiff took out application Exhibit 38 dated 4th October, 2017 presented on 22nd November, 2017 for deciding application Exhibit 18 first before deciding the appeal. By the impugned order, the Appellate Court has rejected the application on the ground that by order dated 5th May, 2007 it was already directed to decide application Exhibit 18 along with appeal and the present application is submitted after 10 years i.e on 4th October, 2017 and the plaintiff did not argue the appeal. The Appellate Court, therefore, declined to set aside the order passed below Exhibit 18. For the reasons recorded in the impugned order, I do not find that any case is made out for interfering with the impugned order. Needless to observe that the Appellate Court while deciding the Appeal will decide application Exhibit 18 in accordance with law and pass appropriate order. Petition fails and the same is dismissed. Order accordingly.

**[R.G. KETKAR, J.]**