

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6389 OF 2018**

Mobin Ahmed Khan] Petitioner

Vs.

Ida Celene Mathias & Ors.] Respondents

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Mr. S. Joshi a/w Mr. Joseph David i/b David Associates, for Petitioner.

Mr. G.S. Godbole, Sr. Advocate a/w Mr. Sumit S. Kothari, for Respondents
No.1 to 6.

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CORAM : R.G. KETKAR, J.

DATE : 2nd JULY, 2018.

P.C:

Heard Mr. Joshi, learned Counsel for the petitioner and Mr. Godbole, learned Senior Counsel for respondents No.1 to 6 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17th April, 2018 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibit 13 in L.E. & C Suit No.16 of 2017. By that order, the learned trial Judge directed the petitioner, hereinafter referred to as “defendant” to deposit the pre-estimated genuine quantified compensation and/or liquidated damages @ Rs. 20,000/- per day from 01/05/2016. The learned trial Judge has further directed the defendant to deposit accrued monthly licence fees @ Rs., 2,00,000/- per month from 1st May, 2016.

3. Mr. Godbole raised preliminary objection to the maintainability of this Petition on the ground that order impugned is under section XV-A of the Code of Civil Procedure, 1908 (for short 'C.P.C'). In view of the decision in the case of **Colaba Central Co-operative Wholesale and Retail Stores Ltd (Alias Sahakar Bhandar) V/s Smt. Kusumben Kantilal Shah & Others, 2003 (4) ALL MR 304**, the petitioner has equal efficacious alternative remedy of filing revision application.

4. Realizing this position, Mr. Joshi seeks permission to withdraw this Petition with liberty to file Revision Application before the Appellate Bench of the Court of Small Causes at Mumbai. He assures that within two weeks from today, the petitioner will file Revision Application before the Appellate Bench of the Court of Small Causes at Mumbai. He submits that time spent by the petitioner in prosecuting this Petition from 12th June, 2018 till date may be excluded.

5. In view thereof, on the motion made by Mr. Joshi, Petition is allowed to be withdrawn with liberty as prayed for and as such is disposed of. Time spent by the petitioner in prosecuting this Petition from 12th June, 2018 till 2nd July, 2018 shall be excluded while considering the issue of limitation. It is made clear that I have not examined merits of the case. All contentions of the parties on merits are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]