

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11495 OF 2018

Shri. Shreeprasad R. Jamdar

...Petitioner

Versus

Smt. Shashikala Prabhakar Nandarni

And Ors

...Respondents

....

Mr. Sameer M. Tendulkar, Advocate for the Petitioner.

Mr. A.S. Khandeparkar a/w. Shilpa A. Joshi, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 10th OCTOBER, 2018

P.C.

1. Heard Mr.Sameer Tendulkar, learned counsel for the petitioner and Mr.A.S. Khandeparkar, learned counsel for respondent No.1, at length.

2. This Petition takes exception to the order dated 20.8.2018 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai below Exhibit-43 in L.E. Suit No.166/204 of 2011. By that order, the learned trial Judge allowed the application made by the plaintiffs and directed defendant No.1 to deposit the arrears of compensation @ Rs.30,000/- per month from the date of filing of Suit i.e. 23.11.2011 till October, 2018 within two months. In addition, the

learned trial Judge directed to deposit future compensation @ Rs.30,000/- per month on or before 10th day of each succeeding month commencing from November, 2018 till disposal of the suit.

3. Mr. Khandeparkar has raised preliminary objection about maintainability of the Petition on the ground that under Section 42(4) of the Presidency Small Cause Courts Act, 1882, the petitioner has an equal efficacious alternate remedy of filing Revision before the Appellate Court. He relied upon the decision of this Court in **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. Vs. Kusumben Kantilal Shah and Ors., 2004 (1) Bom CR 547**. In this judgment, the learned Single Judge of this Court (Coram: Dr.D.Y. Chandrachud,J., as His Lordship then was) held that the order passed by the Court under Order XV-A of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') affects the substantive right and is not a procedural order and, therefore, Revision lies.

4. In view thereof, Mr. Tendulkar seeks permission to withdraw this Petition with liberty to file Revision before the Appellate Court. He further submits that the Writ Petition is instituted on 1.10.2018 and, therefore, the time spent by the petitioner in prosecuting this Petition may be ordered to be excluded while considering the issue of limitation.

He further submits that by the impugned order, defendant No.1 is directed to deposit the compensation within two months and said period may be extended by a period of two weeks from today.

5. In view thereof, on the motion made by Mr. Tendulkar the Petition is allowed to be withdrawn with liberty as prayed for and is disposed of as such. The time spent by the petitioner in prosecuting this Petition may be excluded while considering the issue of limitation Without prejudice to the rights and contentions of the first respondent, the time for complying the impugned order is extended by two weeks from today. Grant of extension shall not be construed as an expression on the merits of the case. All contentions of the parties in that regards are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)