

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.13065 OF 2017**

Ravishankar Hanuman Lodh & Anr.	]	Petitioners
Vs.		
Sheverin W. Willaim Peter & Anr.	]	Respondents

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Mr. K. R. Parekh, for petitioner.
Mr. Piyush Shah a/w Meetal Savla i/b Divya Shah & Co., for respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 19TH JUNE, 2018.

P.C.

Heard Mr. Parekh, learned Counsel for the petitioners and Mr. Shah, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 9th October, 2017 passed by the Appellate Bench of the Court of Small Causes at Mumbai, Bandra Branch below Exhibit 34 as also the judgment and order dated 9th October, 2017 passed by the Appellate Bench of the Court of Small Causes at Mumbai, Bandra Branch below Exhibits 14 and 18. By order dated 9th October, 2017 passed below Exhibit 34, the Appellate Court rejected application made by the petitioners under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for adducing additional evidence. The Appellate Court rejected application mainly on the ground that in the plaint plaintiff positively asserted that the suit premises is not situate in an area which is declared as slum area

under the Maharashtra Slum Areas (Improvement, Clearance & Re-development) Act, 1971 (for short 'Slum Act'). The defendant, however, did not deal with this contention. Even otherwise, defendant did not apply for amending written statement so as to raise this plea. If there is no pleading, party cannot be allowed to adduce evidence beyond the pleadings.

3. In so far as order dated 9th October, 2017 below Exhibits 14 and 17 is concerned, the Appellate Court declined to frame additional issue as to whether suit premises is situate in the slum area and whether the suit as filed is maintainable in view of the Section 22 of the Slum Act.

4. For the reasons recorded in the impugned orders, I do not find that the Appellate Court committed any error in rejecting the application Exhibit 34 as also applications at Exhibits 14 and 18. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]