

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4506 OF 2019

Sharad Jethabhai Paleja	]	Petitioner
Vs.		
Keshavsingh Dwarkadas Kapadia	]	
and others.	]	Respondents

.....

Mr. Rajesh P. Chheda, Advocate for the Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 12th JUNE, 2019.

P.C:

Heard Mr. Chheda, learned Counsel for the petitioner.

2. This Petition takes exception to the order dated 17th January, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 7 in P-Appeal No.158 of 2018. By that order, the Appellate Court allowed application Exhibit 7 filed by the petitioner under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and stayed eviction decree dated 17th February, 2018 passed by the learned trial Judge subject to condition of depositing Rs.17,000/- per month from the date of the decree till final disposal of the appeal.

3. Mr. Chheda submitted that before the Appellate Court neither the petitioner nor the respondents filed any material for fixing reasonable compensation. He states that the petitioner is present in the Court. He has tendered photo copy of his 'PAN' Card, which is taken on record and marked 'X'

for identification. Upon taking instructions from him, he seeks permission to withdraw the Petition and file Review Petition within three weeks before the Appellate Court. He submitted that if the petitioner files Review Petition within three weeks from today, time spent by the petitioner in prosecuting this Petition from 1st March, 2019 till date may be excluded while considering issue of limitation as the petitioner was prosecuting this Petition bona fide.

4. In view thereof, on the motion made by Mr. Chheda, Petition is allowed to be withdrawn with liberty as prayed for and as such is disposed of. If the Review Petition is filed within three weeks from today, time spent by the petitioner in prosecuting this Petition from 1st March, 2019 till today i.e till 12th June, 2019 shall be excluded while considering the issue of limitation as the petitioner was prosecuting the Petition bona fide in this Court. All contentions of the parties are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]