

Mr. Vishal Thaker a/w. Ms Anjali Trivedi, Ms Priti Oza and Ms Priyanka Patel i/b. V. Thakers' Advocates for Petitioner.
Mr. Salunke i/b. Mr. Umesh Kurund for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : MARCH 13, 2019

Heard Mr. Thaker, learned Counsel for the petitioner and Mr. Salunke, learned Counsel for the respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 09.06.2017 passed by the learned trial Judge below exhibit-16 in R.A.E.Suit No.645 of 2016 as also the judgment and order dated 18.01.2018 passed by the Appellate Bench of the Small Causes Court in Revision Application No.65 of 2017. By these orders, the Courts below allowed the application exhibit-16 made by the respondent No.2 / defendant No.2 and directed the petitioner / plaintiff to add respondent No.2 as party defendant No.2 and carry out the consequential amendment in the plaint.

3. Mr. Thaker has invited my attention to the application exhibit-16 made by the respondent No.2. In that application, respondent No.2 has referred to the registered Deed of Assignment dated 24.04.2007 executed by the respondent No.1 / defendant No.1 in favour of the

respondent No.2. Respondent No.2 claims that respondent No.1 has handed over possession and business to the respondent No.2 on 24.04.2007 and that landlord Smilta Nalekar has transferred rent receipt in favour of the respondent No.2. The landlord has issued rent receipt for the month of April on 24.04.2007 and thereafter, rent receipt for the month of May to July 2007 to the respondent No.2 on 01.08.2007. Respondent No.2 claims that from April, 2007, the landlord i.e. plaintiff has accepted the proposed defendant as tenant and continued to be a lawful tenant in respect of the suit premises. Mr. Thaker has invited my attention to the reply filed by the plaintiff where plaintiff has denied the claim made by the respondent No.2 herein. The plaintiff has not accepted respondent No.2 as a tenant of the suit premises.

4. After arguing the Petition for quite some time, Mr. Thaker, on instructions, states that without prejudice to the rights and contentions of the plaintiff that respondent No.2 is not a tenant in the suit premises, he will implead him in the Suit as defendant No.2. He submitted that the parties may be given liberty to adduce evidence on this aspect.

5. In view thereof, subject to keeping the contentions of the parties as regards status of the respondent No.2 open, no case is made out for interfering with the impugned orders. The parties are at liberty to adduce evidence on the question of status of respondent No.2. The Petition is accordingly disposed of.

6. Parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)