

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7116 OF 2019

Cecilia M. D'Souza	...Petitioner
vs.	
Jenie James D'Silva	...Respondent

Mr. Rajesh Singh I/b. Ms. Priti Mahajan, for the Petitioner
Mr. J.M. D'silva, for the Respondent.

CORAM : R. G. KETKAR, J.

DATE : JULY 24, 2019

P.C.:

. Mr. Rajesh Singh, learned counsel for the Petitioner and Mr. J.M. D'silva, learned counsel for the Respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 10th January, 2019 passed by the Appellate Bench of the Small Causes Court, Bandra below Exhibit 12 in (A-1) Appeal No. 49 of 2018. By that order the Appellate Court allowed the application (Exhibit 8) filed by the Petitioner under Order XLI Rule 5 of C.P.C. and stayed the eviction decree dated 15th March, 2018 passed by the learned trial Judge in R.A.E & R. Suit No. 404/759 of 2009 till the final disposal of the Appeal subject to the following conditions:

(a) The applicant (the Petitioner herein) to deposit an amount of Rs. 14,000/- p.m., in the Court towards compensation, from the date of the decree, i.e. from 15-03-2018 till December, 2018 within the period of 2 months from the date of this order.

(b) The applicant to go on depositing the amount of Rs. 14,000/- p.m. till 15th day of each month, till the disposal of this appeal.

(c) The Additional Registrar of this Court is hereby directed to invest the said mount of compensation as and when deposited by the applicant in the fixed deposit account, in any Nationalized Bank on yearly basis on next working date and thereafter renew it from time to time.

3. It is a common ground between the parties that the Petitioner did not produce the valuation report dated 18th February, 2019 of R.R. Pednekar before the Appellate Court while contesting the application. The Petitioner did not file rejoinder to the affidavit in reply filed by the Respondent opposing the application filed by the Petitioner.

4. In view thereof, after arguing the Petition, Mr. Rajesh Singh seeks permission to withdraw the Petition with liberty to file Petition before the evict Appellate Court seeking review of the impugned order. He assures that the Petitioner will file Review Petition along with the valuation report dated 18th February, 2019 in the Appellate Court within four weeks from today. Mr. J.M.

D'silva submits that in case such liberty is granted to the Petitioner, then all contentions of the Respondent may be expressly kept open. The Respondent may be permitted to file valuation report and rely upon the instances for determining reasonable compensation.

5. In view thereof, the Petition is disposed of with liberty as prayed for.

6. If the Petitioner files the Review Petition within four weeks from today, the time spent by the Petitioner in prosecuting the Petition *bonafide* in this Court from 4th March, 2019 till today i.e. 24th July, 2019 shall be excluded while considering the issue of limitation. The time granted for depositing arrears is extended for a period of six weeks from today.

7. All contentions of the parties in the Review Petition are kept open.

(R.G. KETKAR, J.)