

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1830 OF 2019
IN
WRIT PETITION NO.7548 OF 2019**

Vishambhar Khemchand Mehrotra	...Applicant
In the matter between	
Rani Kantilal Jain	...Petitioner
<i>Versus</i>	
Vishambhar Khemchand Mehrotra	...Respondent

Mr.Harmit Trivedi i/b. V.R. Law for the applicant.

Mr.Javed Akhtar Khan for the original petitioner.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 14th AUGUST 2019.

P.C. :

. In a suit for eviction, the 2nd defendant had a grievance. So she filed a writ petition, seeking these reliefs:

“(a) That this Hon'ble Court be pleased to call for the records and proceedings of Misc Notice No.282 of 2008 in RAE Suit No.456/1281 of 1995 on the files of Hon'ble Small Causes Court, Bandra Branch, CR no.33, and after going through the propriety, tenability and legality thereof be further pleased to set aside and or quash the impugned ORDER Dt.13/3/2018 passed in Misc Notice No.282 of 2008 in RAE Suit No.496/1281 1995 by CR No.33 Small Causes Court, Bandra Branch be set aside.

(b) That pending the hearing and final disposal of this Petition this Hon'ble court may be pleased to stay the hearing of Misc Notice No.282 of 2008 in RAE Suit No.456/1281 of 1995 on the files of Hon'ble Small Causes Court, Bandra Branch, CR no.33, be stayed.

(c) That ad-interim and interim reliefs in terms of prayer [b] may be granted

(d) For such other and further reliefs as the nature and circumstances of the case may require.”

2. This Court through its order, dated 11th June 2019, disposed of the writ petition. After considering the issue in detail, it has rendered these observations and directions:

“..15) Under these circumstances, without prejudice to the contentions of either party to the litigation, I dispose of this Writ Petition with these observations and directions :

(i) The second defendant's counsel has gone on record before this Court that the second defendant has no further witnesses to be examined.

(ii) The Trial Court will mark all the documents the second defendant has so far produced, hear the respective counsel, and dispose of the delay condonation application, on merits.

(iii) In the course of its deciding the delay condonation petition, the Trial Court will consider the relevance of the documents the second defendant has produced, without reference to the fact that the authors or the originators of the documents have not been examined.

(iv) Officious as it may seem, if the Trial Court decides the delay condonation petition positively, it will immediately take up the application under Order 9, Rule 13 of CPC., and decide it on merits.

(v) The parties on either side must act with promptitude and a spirit of cooperation to enable the Trial Court to get on with the matter, expeditiously.”

3. Now, the respondent-landlords before this Court, and the plaintiffs before the trial Court, filed Civil Application No.1830 of 2019 seeking the following reliefs :

“The Applicants, therefore, pray that :-

- (a) pending hearing and final disposal this Hon'ble Court be pleased modify/clarify the order 11th June 2019 in terms of the present application;
- (b) costs of this Application be provided for;
- (c) For such further and other reliefs as the nature and circumstances of the case may require.”

4. Heard Mr.Harmit Trivedi for the applicants and Mr.Javed Akhtar Khan for the original petitioner-respondent.

5. I will refer to the parties as they were arrayed before the trial Court. To elaborate on the scope of the Civil Application, the learned Counsel for the plaintiffs has submitted that initially the trial Court did not mark the 2nd defendant's documents. Therefore, there was no occasion for the plaintiffs to lead further evidence. In the light of this Court's order now sought to be clarified, the trial Court has marked the documents the 2nd defendant has placed before it. As a result, now the plaintiffs must lead further evidence to rebut the 2nd defendant's evidence. But the trial Court, according to him, refuses to allow the plaintiffs to place any rebuttal evidence.

6. On the other hand, the learned counsel for the 2nd defendant has submitted that the order needs no clarification, for it suffers from no ambiguity. So he urges this Court to dismiss the Civil Application.

7. As the record reveals, the 2nd defendant filed the writ petition seeking a particular relief: marking of documents. The plaintiffs resisted that. Eventually, this Court passed an order. That order was based on the reliefs the 2nd defendant sought, not based on what the plaintiffs sought.

8. In any proceedings initiated by a particular party, the rival party, at best, can oppose the claim or the relief, but cannot seek a positive direction in its favour. This proposition is not universal, though. But it needs no reiteration that what cannot be done directly cannot be done indirectly, either. So a relief in the name of clarification is much less permissible.

9. Besides that, this Court has exercised its supervisory jurisdiction under Article 227 and rendered the order now sought to be modified or clarified. That exercise of jurisdiction has confined itself to ensure that the trial Court has conducted itself judicially within the jurisdictional bounds. Nothing more.

10. Once the trial Court complies with this Court's order, in its wake there may follow certain consequences. That is what seems to be plaintiffs' concern now. They want to, as I understand, rebuttal evidence to the evidence the 2nd defendant has placed before the trial Court. That rebuttal evidence, if any, is not the subject of the writ petitioner which engendered the order, dt.11th July 2019. It is only a consequence.

11. *Ex debito justitiae*, the plaintiff has the right to present before the trial Court its requirement to meet the consequences that flowed from the trial Court's implementing the order, dt.11th June 2019. What the trial Court should do in that regard is not a matter of clarification, at any rate. It entirely lies within the trial Court's discretionary jurisdiction. This Court collaterally, so to say, will not usurp the trial Court's adjudicatory authority.

12. I, therefore, leave it open for the plaintiffs to urge all these pleas and grounds before the trial Court as the law permits. Then, the trial Court will consider them on their merits.

As a result, I find no merits in this Civil Application, So I close it.

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Vina A.
Khadpe
Date:
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Vina A.
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[DAMA SESHADRI NAIDU, J.]