

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

WRIT PETITION NO. 11123 of 2019

Omkar Co-operative Hsg. Soc. Ltd.	...	Petitioner
v/s.		
Kishore Kalyanji Badiani & ors.	...	Respondents

Mr. S.M.Railkar for the petitioner.

Mr. V.S. Kapse for respondent no.1.

CORAM : DAMA SESHADRI NAIDU, J.

17th October 2019.

P.C.

Writ Petition No.5599/2010 concerns interim compensation pending the appeal before the Appellate Bench of the Small Cause Court. Writ Petition No.9128/2014 questions the orders the Appellate Bench passed in two separate applications: one relating to the amendment of the written statement and the other for receiving the additional documentary evidence. Though the trial Court and the appellate Bench of the Small Cause Court passed two separate orders, the petitioner challenged both the orders in one writ petition.

2. In the above context, while deciding the writ petitions, this Court felt that there could not have been one single writ petition

against two distinct orders under two separate applications. So it confined its adjudication to Writ Petition No.9128/2014, that is the amendment at the appellate stage. But it emerges that the very amendment was based on the documents the respondents sought to produce before the appellate Bench. Thus, this Court has considered the entire matter, assigned reasons, and allowed the Writ Petition No.9128/2014.

3. In its judgment dt.27.09.2009, this Court granted leave to the petitioner to file a separate writ petition to question the order dated 06.08.2014 in below Exhibit 23 in Appeal No.618/2018. It was despite the delay. Thus, the petitioner has come up with this fresh writ petition.

4. The petitioner's counsel has submitted that though technically the petitioner was required to file a fresh writ petition, the issue stands squarely covered by this Court's judgment, dated 27th September 2018, in Writ Petition No.9128/2014. According to him, on the lines of the same reasoning, this writ petition, too, must be allowed.

5. On the other hand, the learned counsel for the first respondent has submitted that the petition in below exhibit 23 was filed under Order 41 Rule 27 of CPC. According to him, the appellate Bench ought to consider that application while it would dispose of the very appeal, but not before that. In this context, he has submitted that if the appellate Bench holds that these documents will aid the Bench in

adjudication, it may, in its discretion, entertain the first respondent's application.

6. Heard Shri Railkar, the learned counsel for the petitioner, and Shri V. S. Kapse, the learned counsel for respondent No.1.

7. I reckon the Writ Petition No.9128/2014 and this writ petition address two connected issues. In fact, the 1st respondent wanted to amend the pleadings based on the documents he secured pending the litigation. As the law mandates, he has filed two separate applications and invited two separate orders. Then, the respondent in the appeal has filed one writ petition questioning both the orders. This Court in Writ Petition No.9128/2014 considered the issue comprehensively but did not rule on the order arising under exhibit 23.

8. I, therefore, set aside the order, dated 06.08.2014, passed below exhibit 23 and leave it open for the appellate Bench to consider that application along with the main appeal. Nevertheless, when it takes up that application, it will duly consider this Court's observations in its judgment, dt. 27.09.2009, in Writ Petition No.9128/2014.

The writ petition is accordingly disposed of. No order on costs.

(DAMA SESHADRI NAIDU, J)