

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

WRIT PETITION (ST.) NO.30268 OF 2019

Bennett, Coleman & Co. Ltd. ... Petitioner

V/s.

The Board of Trustees
of the Port of Mumbai ... Respondent

Mr.Dhavan Jhumani i/by Ms.Chandrika Prajapati, Advocate
for the Petitioner.

None for the Respondent.

**CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 18, 2019.**

P.C.:-

1. Heard Mr.Dhavan Jhumani, learned counsel for the petitioner.
2. He has also filed an affidavit as to service of notice upon the respondent which is perused and accepted.
3. Despite service, there is no representation on behalf of the respondent.
4. Petitioner is aggrieved by the action of the Estate Officer, Mumbai Port Trust in only framing the issue of limitation in Case No.EO/E(278) OF 2019.

5. Learned counsel for the petitioner submits that petitioner had on its own volition handed over possession of the premises in question to the respondent. Thereafter, respondent has initiated proceeding for damages which has been registered as case No.EO/E/278/2019.

6. On 7th August, 2019, petitioner submitted the following draft issues for consideration:-

“1. Whether the claims of the Petitioner are barred by the law of limitation?

2. Whether the Petition is maintainable without compliance with the mandatory provisions of Sections 4 and 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971?

3. Whether the Petitioner is entitled to claim any damages in light of its own failure to accept possession of the premises in question from the Respondent?

4. Whether the Petitioner proves that it attempted to mitigate the losses suffered by it and the damages that it claims?”

7. By the impugned order dated 16th October, 2019, the Executive Officer has only framed the following issue:-

“Whether the claims of the Petitioner are barred by the law of limitation?”

8. After hearing learned counsel for the petitioner and on due consideration, court is of the view that draft issue

Nos.3 and 4 may also be taken up for consideration by the Estate Officer while proceeding with the aforesaid case.

9. No opinion is expressed on merit and all contentions are kept open.

10. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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