

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

**REVIEW PETITION NO.3 OF 2020
IN
CIVIL REVISION APPLICATION NO.485 OF 2019**

Balkrishna Ramchandra Mishra ... Petitioner/
Org. Defendant No.1(e).

Versus

Kumari Maniben Devraj Shah
And Others ... Respondents

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Mr. V.T. Lulia a/w Mrs. P.P. Madhwani for the Petitioner.

Mr. Ranjeet Thorat, Senior Counsel a/w Mr. Akshay Pawar i/b Kunal Bhanage for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATE : 4 MARCH 2020

P.C. :

. Heard learned Counsel for the parties.

2 This Review Petition seeks review of an order passed by this court on 3 September 2019 on the captioned Civil Revision Application. The civil revision application challenged an order passed by the Appellate Bench of the Court of Small Causes at Mumbai. The controversy arose out of an eviction suit filed by Respondent No.1 (original plaintiff) against the Review Petitioner herein, who was original defendant no.1(e). The controversy pertained to change of

user of the premises from residential to business or commercial user and its unlawful subletting. On both issues, the two courts below came concurrent findings of fact. This court did not find merit with the challenge to these findings in revision and, accordingly, dismissed the revision application. The other ground urged before this court when the revision application was considered was that the suit being in respect of agricultural land was not maintainable under the provisions of the Rent Act, since agricultural land was exempted from the definition of ‘premises’ in Section 5(8) of the original Bombay Rent Act. The court did not countenance this contention on the part of the revision applicant’s counsel. This court, in its order dated 3 September 2019, observed that no such ground appeared to have been urged before the Appellate Court and no point for determination was framed by the Appellate Court. It is pointed out in this review petition that the appellate order does refer to the ground against maintainability of the suit on account of the suit property being exempted from the definition of ‘premises’.

3 What is apparent from the order of the Appellate Court is that the ground appears to have been noted as part of the original written statement. As part of the original written statement and in the light of what was submitted before the trial court, a learned Single Judge of the Court of Small Causes, in the original order, had duly considered and negatived the contention. Though this contention does find place in the Memo of Appeal preferred by the Review Petitioner herein, it is by no means apparent from the order passed by the

Appellate Bench that this ground was actually urged before it when the appeal was argued. Even in the revision application, it has not been urged by the Review Petitioner herein that this ground was actually pressed before the Appellate Bench and yet not considered by it. In the order passed by this court in the review application, accordingly, the particular contention of the applicant was not considered by this court.

4 These facts do not show any important or new piece of evidence, which was not within the knowledge of the Review Petitioner or which could be brought before the Court, when the order under review was passed. So also, there is no error apparent on the face of the order, so far the order under review is concerned, and there is no other reason why the order deserves to be reviewed.

5 There is, accordingly, no merit in the review petition. The review petition is dismissed.

6 Learned Counsel for the Review Petitioner seeks time to vacate the suit premises against an undertaking to be furnished by the Review Petitioner. Learned Counsel, after taking instructions from the Review Petitioner, submits that his client does not propose to carry the matter any further and instead undertakes to the court that if he is given time of six months to vacate the suit premises, he and his family members shall vacate the suit premises at the end of this period of six months, without claiming any right or relief. The

undertaking is noted and accepted. Subject to the Review Petitioner and all his family members filing usual undertaking in this behalf in the Registry within a period of two weeks from today, with copy to the Advocate for the Respondents, the Review Petitioner is granted six months' time to vacate the suit premises. It is made clear that at the end of this period of six months, the Petitioner and his family members will have to vacate the premises without any recourse. It is also made clear that in case no such undertakings are filed within the period reserved as above, the original order of the Court of Small Causes may be executed by the Plaintiff.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
Chittewan
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