

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

WRIT PETITION NO. 1133 OF 2020

Mrs. Zavera Neil Phillips

...Petitioner

vs.

State of Maharashtra and anr.

...Respondent.

Mr. J.M. D'silva for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondent No.1.

Mr. R.R.Sharma for Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 03rd February, 2020

PC:

1. Heard learned counsel for the parties.

2. By this petition the petitioner has impugned the order dated 1.10.2019 passed by the learned Ad-hoc District Judge, City Civil Court, Greater Mumbai below Exh.18 in S.C. Suit No.4048 of 2009.

3. Learned counsel for the petitioner submits that the petitioner is not challenging the earlier orders dated 10.8.2018 and 15.4.2019 passed by the Trial Court. He submits that merely because the learned Judge has rejected the earlier applications, could not have been a ground for rejecting the petitioner's subsequent application (Exh.18) seeking to enter the witness box for leading further evidence to prove the documents which are not exhibited. He submits that admittedly the cross examination of the petitioner

(original plaintiff) has not commenced.

4. Learned counsel for the respondents vehemently opposed the petition and submits that no interference is warranted in the impugned order dated 1.10.2019. He states that petitioner has not challenged the earlier orders dated 10.8.2018 and 15.4.2019 and as such, the said orders have attained finality.

5. Perused the papers as well as the impugned order. The petitioner is the original plaintiff who has filed a suit for eviction and for possession of the suit property, as against the respondent-defendant. It appears that the petitioner (original plaintiff) filed evidence on affidavit along with certain documents. The Trial Court exhibited some documents vide order dated 10.8.2018 and was pleased to reject the petitioner's prayer for exhibiting some documents, as they were not relevant. Admittedly, the petitioner has not challenged the said orders dated 10.8.2018 and 15.4.2019. As far as application (Exh. 18) filed by the petitioner is concerned, it appears that the petitioner after filing his affidavit of evidence wants to examine himself and lead further evidence to prove certain documents which are not exhibited. Admittedly, the cross examination of the petitioner has not commenced. There is no impediment for the petitioner to step into the witness box and lead further evidence, if she so desires subject of-course to the admissibility/relevance of the said documents. If any documents are produced by the petitioner, the trial court to consider taking the same on record, subject to its

admissibility and relevancy and objection, if any raised by the respondents. It appears that the trial court has rejected the petitioner's application (Exh.18) as his predecessor had observed that the said documents were not relevant to the subject matter of the case and as the court had no power to set aside the said order.

6. Accordingly, for the reasons set out herein above, the impugned order dated 1.10.2019 passed below Exh.18 in S.C. Suit No.4048 of 2009 is quashed and set aside. The petitioner is permitted to step into the witness box and lead further evidence to prove the documents subject to its admissibility and relevancy in the case and subject to objection, if any, of the respondents. All the contentions of all the parties are kept open.

7. Petition is disposed of in the aforesaid terms.

8. All parties to act on an authenticated copy of this order.

REVATI MOHITE DERE, J.