

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

WRIT PETITION (ST.) NO. 30155 OF 2019

Mrs. Manguben @ Mangalaben Motibhai Petitioner
Patel

Versus

Heerachand Chhogmalji Respondent

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Mr. V.S. Kapse i/b H.J. Lulia for the Petitioner
Mr. Sameer Bhalekar for the Respondent

CORAM : A. S. GADKARI, J.
DATE : 16th JANUARY, 2020

P.C.

1. By the present petition under Article 227 of the Constitution of India, the Petitioner-landlord has challenged the impugned Judgment and Order dated 05.11.2019, passed by the Appellate Bench of Small Causes Court at Mumbai in Revision Application No.142 of 2019.

By the impugned Judgment and Order, the Appellate Bench dismissed the said revision and confirmed the order dated 06.08.2019, passed by the learned Judge of the Small Causes Court below Exh.158 in R.A.E.& R. Suit No. 165/485 of 1998, rejecting her application for striking of and/or ignoring paragraph Nos.3,6,7,9,10,11,12,13,14,15 and 16 from the affidavit-in-lieu of examination-in-chief filed by DW-2 Mrs.Mira Deepak Khanna.

2. Heard Mr. Kapse, learned Counsel for the Petitioners and Mr.

Bhalerao, learned Counsel for the Respondent. Perused the entire record and documents annexed to the petition.

3. The record indicates that, the Petitioners have filed the aforesaid R.A.E.& R. Suit No. 165/485 of 1998 against the Respondent under the provisions of Bombay Rent Control Act, 1947, for eviction on the ground of arrears of rent, change of user, nuisance and causing damage to the suit property.

After receipt of summons, the Respondent (Defendant) appeared in the said suit and filed his written statement, and additional written statement after the Petitioners (Plaintiffs) carried out amendment in the plaint. The Trial Court, accordingly, framed issues on 23.06.2003. The Plaintiffs and Defendant, thereafter filed their affidavit-in-lieu of examination-in-chief and they have been cross-examined by their respective counsels.

4. In this background, the Respondent-tenant in support of his case, intends to examine defence witness (DW-2) namely Mrs. Mira Deepak Khanna. The said defence witness No.2 filed her affidavit-in-lieu of examination-in-chief on 04.02.2019 containing 16 paragraphs. It is the contention of the Petitioner that, the statements made by DW-2 Mrs.Mira Deepak Khanna in paragraph Nos.3,6,7,9,10, 11,12,13,14,15 and 16 in the said affidavit-in-lieu of examination-in-chief are irrelevant, making personal allegations against the Petitioners and not necessary for just

decision of the suit, in view of the issues framed and therefore be struck off from record. The Petitioners, therefore, filed an application below Exh.158 for striking off evidence of DW-2 with respect to the said paragraphs. The Trial Court, by its impugned order dated 06.08.2019 has rejected said application. The Appellate Bench of the Small Causes Court, Mumbai, by its impugned Judgment and Order dated 05.11.2019, confirmed the order passed by the Trial Court, by dismissing the said revision.

5. With the assistance of the learned counsel appearing for the respective parties, I have minutely perused the affidavit-in-lieu of examination-in-chief filed by DW-2 Mrs. Mira Deepak Khanna and it clearly appears that, paragraph Nos. 9,10,11,12,13,14 and 16 of the said affidavit are either redundant for just decision of the dispute in question or devoted in making allegations against the Petitioners. The said paragraphs in the affidavit of DW-2 are irrelevant for just decision of the suit and issues framed therein for its adjudication.

6. By now, it is the settled position of law that, the evidence which does not pertain to the issues framed in the suit and can not be and need not be permitted to be laid by filing affidavit-in-lieu of examination-in-chief under Order XVIII Rule 4 of the Code of Civil Procedure. The evidence, which is on the face of it is irrelevant to the issues involved in the suit, which the Court ultimately can not decide, can be struck off and

can be ignored even before commencement of cross-examination. Reliance is placed on the decision in the case of Mr.Jitendrasingh Rajendrasingh Khushwah & Ors. Vs. Suresh Rajendrasingh Khushwah, reported in 2014(2) ALL MR 132.

As noted earlier, paragraph Nos. 9,10,11,12,13,14 and 16 from the affidavit-in-lieu of examination-in-chief of the DW-2 Mrs. Mira Deepak Khana are not related to the issues in the suit and can not be permitted to be remained on record, as those paragraphs are irrelevant to the issues framed by the Trial Court for decision of the suit instituted by the Petitioners.

7. In view thereof, paragraph Nos. 9, 10, 11, 12, 13, 14 and 16 from the affidavit-in-lieu of examination-in-chief of the DW-2 Mrs. Mira Deepak Khana are struck out from the said affidavit. Remaining paras are kept on record for the purpose of cross-examination of the Petitioners.

8. In view of above, impugned orders dated 05.11.2019, passed by the Appellate Bench of Small Causes Court at Mumbai, in Revision Application No.142 of 2019 and dated 06.08.2019, passed by the learned Judge of the Small Causes Court, Mumbai (Bandra Branch) below Exh.158 in R.A.E.& R. Suit No. 165/485 of 1998 are hereby quashed and set aside.

9. Petition is allowed in the aforesaid terms.

(A. S. GADKARI, J.)