

Sneha N.
Chavan

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

CIVIL REVISION APPLICATION NO. 25 OF 2020

The Bombay St. Xavier's College Society .. Applicant
V/s.

M/s. Manisha Caterers ..Respondent

Mr. S.C. Naidu a/w Ramesh Asawa, Aniket Poojari & T.R. Yadav i/b
C.R. Naidu & Co. for the Applicant.

Mr. Arsh Mishra a/w Kavita Anchan i/b M/s. M.V. Kini & Co. for the
Respondent.

CORAM : C.V. BHADANG, J.

DATE : 02nd MARCH, 2021

PC.

1. Heard the learned counsel for the parties.
2. The challenge in the present revision application is to the orders dated 16.07.2018 and 10.08.2018 passed by the Small Causes Court at Mumbai. By the first order dated 16.07.2018, the preliminary issue framed under Section 9A of C.P.C. was deleted on account of the fact that Section 9A of C.P.C. itself was deleted. The contention on behalf of the applicant is that on reintroduction of Section 9A, the preliminary issue ought to have been restored. The second order is passed below Exhibit 34, which was an application

under Section 8 of the Arbitration and Conciliation Act, 1996 on the ground that there being an Arbitration clause in the conducting agreement, the suit was not maintainable.

3. The learned counsel for the respondent has raised a preliminary issue about the applicant having an alternate remedy under Section 34(4) of the Maharashtra Rent Control Act, 1999 before the Appellate Bench of the Small Causes Court.

4. Faced with this, Mr. Naidu, the learned counsel for the applicant on instructions, seeks leave to withdraw the Civil Revision Application with liberty to approach the Appellate Bench of the Small Causes Court. He submits that the applicant may be protected on limitation on account of the pendency of the present Civil Revision Application.

5. In that view of the matter, the Civil Revision Application is disposed of as withdrawn, with liberty as prayed.

6. It is open to the applicant to approach the Appellate Bench of the Small Causes Court within two weeks from today.

7. If the applicant approaches the Appellate Bench under Section 34(4) of the Act, the Appellate Bench shall have due regard to the provisions of Section 5 read with Section 14 of the Limitation Act on account of pendency of this Civil Revision Application from 24.04.2019 till date.

8. Needless to mention that this Court has not examined the rival contentions on merits, which are left open.
9. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.