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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 285 / 2020

Mrs. Uma R. Kapoor

.. Petitioner

Vs.

Famous Studios Previously Known As Famous
Cine Laboratories And Studios.

.. Respondent

Mr. Amol P. Mhatre i/by Mr. Sameer Mhatre, Advocate for Petitioner.
Mr. Jayesh Gawde i/by Nishant S. Vyas, Advocate for Respondent
No.1.

CORAM : SANDEEP K. SHINDE J.

DATE : 17th MARCH, 2021.

P.C. : -

1. Petitioner – Defendant, tenant in RAE Suit No. 358/511 of 2006 has taken exception to order dated 7th December, 2019 passed below Exhibit -24 in Appeal No. 548/2009 passed by the Appellate Bench, Court of Small Causes at Bombay.

2. Eviction Decree was passed in RAE No. 358/511 of 2006 against the Petitioner under Section 16 (1)(n) read with 15(1) of the Maharashtra Rent Control Act, 1999 at the instance for the Respondent (Landlord). Decree, has been challenged in appeal and is pending before the Appellate Bench, the Court of Small Causes at Bombay. Pending appeal, an application at Exhibit 24 was filed by the Petitioner, wherein he prayed, that;

- (a) the matter be remanded back to the Trial Court for a fresh trial or in the alternative;
- (b) the Appellant be permitted to cross-examine Plaintiffs' witness and also be permitted, to lead her own evidence both oral and documentary;
- (c) cost of this application be provided for;
- (d) such other and further reliefs in the matter and circumstances of the case be granted.

3. The reasons set out in the application for seeking remand, is that the Advocate of the Petitioner, did not cross-examine the Plaintiff and his witnesses; may be for the reason that her Advocate was once associated with the respondent-plaintiff. For the obvious

reasons, application was not entertained. The learned Appellate Bench in paragraph no. 20 of the impugned order has observed thus:

So, remand back of the matter is nothing but re-trial of the case and re-trial of the case can be allowed only under the provisions of Order-41 Rule-23 of the CPC when the decree is on preliminary issue under Order-41 Rule-23A of the CPC when the Court did not frame the issue inspite of pleadings and under Order-41 Rule-27 of the CPC when the Court feels that some issue is to be framed and Court remanded back the matter for recording of the evidence. So, power is given to the Court under these provisions only. So, the present case does not come in the ambit of Order-41 Rule-23, 23A and 25 of the CPC. The present case also does not come in the ambit under Order-41 Rule-26 of the CPC as decided in the case of 2019(6) Mh.L.J Pg. 60.

4. I do not see reason to disagree, with the impugned order. However in view of the peculiar facts of the case, if the Appellate Court is satisfied that, a case is made out to exercise 'remand powers, it may, do so, in accordance with law.

5. With these observations, the Writ Petition is disposed of with no order as to cost.

(SANDEEP K. SHINDE, J.)