

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2211 OF 2022

Trilok Singh Gandhi

... Petitioner

V/s.

Rajendra Kaushalraj Mehta

... Respondent

Mr.Vivek Kantawala a/w Mr. Amey Patil, Mr. Shanay Bafna and Mr. V. M. Sharma i/b. M/s. Vivek Kantawala & Co., for the Petitioner.

Mr.Jeetendra Ranawat i/b. Mr. Waquar Ahmad, for the Respondent.

CORAM : A. S. GADKARI, J.

DATE : 4th MARCH, 2022.

P.C.:-

By the present Petition, the Petitioner, a 92 years old person has prayed for the following reliefs :

- “(a) That this Hon’ble Court be pleased to issue a Writ of Mandamus or any such Writ of the like nature directing the Hon’ble Small Causes Court, Mumbai to expedite and to hold day to day hearing of R.A.E. Suit No.444 of 2019 and that the said Suit be concluded within three months from the date of the order;
- (b) That the Hon’ble Court be pleased to direct the Hon’ble Small Causes Court to expedite RAE Suit No.444 of 2019 to be concluded within a period of 3 months and grant the Petitioner a day to day hearing for effective adjudication of the Suit;”

2 Heard Mr.Vivek Kantawala, learned counsel for the Petitioner and Mr.Jeetendra Ranawat, learned counsel for the Respondent-tenant. Perused record.

3 Record indicates that by an Order dated 7th January, 2022 passed

below Exh.26 in the R.A.E. Suit No.444 of 2019, the trial Court has already expedited the suit. However, in the paragraph 2 of the operative part of the said Order, it is observed thus;

2. As the plaintiff is the senior citizen aged 91 years, the hearing of the present suit is 'expedited'. It is taken for hearing as per the available roster on priority basis.

Mr. Kantawala, learned counsel for the Petitioner submitted that it is the only desire of the Petitioner that, his cross-examination be concluded during his life time and nothing more.

Learned counsel for the Respondent vehemently opposed the Petition.

4 It is an admitted fact on record that, the petitioner/plaintiff, as of today is 92 years of age. He has filed affidavit in lieu of Examination-in-Chief on 22nd January, 2020 in the trial Court. In last two years, the Respondent has not cross examined him on various grounds, including the ground that he has filed Transfer Application of the said Suit to other Court on the ground of bias and with other allegations. Thus, the main Suit with other interlocutory Application is pending for final adjudication.

5 As noted earlier, it is an admitted fact on record that the Petitioner / Plaintiff is 92 years of age as of today. It appears from the pleadings of the Respondent that the Respondent is interested in protracting the hearing of the said Suit filed by the Petitioner for the reasons best known to him. For the sake of argument even if it is presumed that the Principal Judge of the

Small Causes Court, at Mumbai, allows the Application for transfer of Suit to some other learned Judge, then also the fact on record remains that the Petitioner has reached dot age and the same can not be disputed.

6 In view of the above, the learned Judge of the Small Causes Court, Mumbai is seized of RAE Suit No.444 of 2019 is further directed to conclude the cross-examination of the Petitioner within a period of two months from the date of receipt of present order.

Respondent is directed to co-operate with the trial.

It is made clear that if the Respondent does not co-operate with the trial Court in that behalf, the trial Court is directed to record the said fact and may adopt appropriate legal remedies as may be permissible under the provisions of laws including the Civil Procedure Code.

7 Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)