

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

WRIT PETITION NO. 12619 OF 2022

Harakhchand Kunverji Gada	...Petitioner
Versus	
Meghji Nenshi Decd. Thr. Lhrs & Ors	...Respondents

Mr. Surel S. Shah a/w. Adv. Bhavin Gada, Adv. Najafia for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATED : 21th OCTOBER, 2022

P.C.:

1. Application Exhibit-198 is taken out by the plaintiff in pending Ejectment Application No. 172/E of 1970 seeking discarding of part piece of evidence in the Examination-in-Chief of the defendant no. 3 i.e. RW 1. Vide impugned order said objection is directed to be considered at the time of the evaluation of evidence while delivering the judgment.

2. The contentions of learned counsel for the petitioner/plaintiff are, once the evidence affidavit i.e. examination-in-chief is placed on record by defendant no. 3, petitioner is duty bound to cross examine the said witness. As a sequel of above, the part of evidence of defendant no. 3 which is without any supporting pleading will be forced to be analyzed by the Court Below.

3. I have appreciated the said submissions in the light of judgments which are cited before me, which are as follows:

(a) *Harish Loyalka & Anr. vs. Dileep Navada & Ors.* (2014) 4 AIR Bom R 545

(b) *Mahabanoo Navroz Kotwal vs. Piloo Fali Bomanji Amarchand Mansion & Anr.* (2014) SCC Online Bom 615, (2015) 3 AIR Bom R 151, AIR 2015 (NOC 766) 287

(c) *Banganga Co-operative Housing Society Ltd. Mumbai vs. Mrs. Vasanti Gajanan Nerurkar* 2015 (4) ABR 639.

4. The fact remains that ejectment proceedings are pending since last for more than 40 years.

5. In this background, it will be inappropriate for this Court to stall the proceedings by showing indulgence in exercise of extraordinary jurisdiction.

6. Rather, this Court is sensitive to the observations made by the Small Causes court in paragraph no. 5 of the order impugned that all the objections of petitioner shall be considered at the time of final hearing of the suit. The trial court has already taken note of the objections of the petitioner based on the absence of pleadings.

7. Perhaps the said view is based on the judgment of Apex Court in the matter of *Bipin Shantilal Panchal vs State of Gujarat and Anr*, AIR (2001) SC 1158.

8. As such, it is made clear that it shall be always open for the appellant to cross examine defendant no. 3 by placing on record their objections about absence of supportive pleadings in the form of defence.

9. The Small Causes Court shall proceed with hearing of evidence/cross examination as to their objections which can be argued at the time of final hearing of the suit.

10. In view of above observations, in my opinion, no indulgence is called for.

11. As such, the petition stands disposed of.

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(NITIN W. SAMBRE, J.)