

Harish

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

WRIT PETITION NO. 952 OF 2023

Tajdar Amrohi	...Petitioner
Versus	
Mr. Samir N. Bhojwani & Anr.	...Respondents

Mr. U. V. Singh, for the Petitioner.

Mr. Surel Shah a/w, Mr. D. V. Deokar, Mr. Pinakin Modi i/b,
M/s. Parimal K. Shroff & Co., for the Respondents.

Mr. Jaydeep Deo, Amicus Curiae.

CORAM : MADHAV J. JAMDAR, J.

DATE : 28th April, 2023

P.C.:

1. Heard Mr. Singh, learned counsel appearing for the Petitioner and Mr. Shah, learned counsel appearing for the Respondents. Mr. Jaydeep Deo, learned counsel also assisted the Court.

2. The Petitioner is the Original Defendant No. 2. Learned Trial Court decreed the suit by passing decree of eviction and mesne profits on 7th April, 2005 and the said decree is confirmed up to the Supreme Court. It is admitted position that, the Plaintiffs i.e. Respondents have received possession of the suit premises and presently proceedings pending are only with respect to mesne profits.

3. By order dated 13th January, 2017 the defence of the Defendants was struck off. Thereafter, by order dated 14th February, 2018 the said order was set aside. The Defendant No. 2 filed Application bearing Exhibit-40 for dismissal of the suit on the ground that said order dated 14th February, 2018 is not complied with. The learned Judge, Small Cause Court, Mumbai dismissed the said Application bearing Exhibit-40 inter alia on the ground that there is no direction in order dated 14th February, 2018 which can be complied with.

4. By order dated 14 February, 2018, the learned Judge of Small Causes Court, Mumbai has only set aside the order dated 13th January, 2017 passed below Exhibit-20 by which the defence of the Defendants was struck off. Therefore, it is very clear that, the Plaintiff was not directed to comply with anything by order dated 14th February, 2018.

5. Therefore, there is no substance in the Application bearing Exhibit No. 40 and the Application was rightly dismissed by the learned Judge, Small Causes Court, Mumbai. Learned Advocate appearing for the Petitioner failed to point out any illegality in the impugned order. Therefore, no substance in the present Writ Petition. Accordingly, the Writ Petition is dismissed however, with no order as to costs.

6. Mr. U. V. Singh, learned counsel appearing for the Petitioner stated that, during the pendency of the Writ Petition, the Petitioner failed to cross-examine the witness of the Plaintiff and therefore, his cross has been closed. Mr. Shah, learned counsel appearing for the Respondents on instructions submit that, Respondents have no objection if the Petitioner i.e. Original Defendant No. 2 is allowed to cross-examine the witness of the Plaintiff. Accordingly, if the application is filed by the Defendant No. 2 in Mesne Profit Miscellaneous Application No. 3 of 2012 seeking permission to permit the Defendant No. 2 to cross-examine the witness of the Plaintiffs, then, the learned Judge of the Small Causes Court to consider the said Application sympathetically as the cross was closed during the pendency of the Petition and Mr. Shah, learned counsel appearing for the Respondents on instruction has stated that, Respondents will have no objection for conducting cross-examination of the Plaintiff's witness.

7. However, it is clarified that the Petitioner shall not take unnecessary adjournment. Both the parties to co-operate with the learned Judge for disposal of the the said Mesne Profit Miscellaneous Civil Application No. 3 of 2012 expeditiously. Learned Judge is requested to dispose of the said Miscellaneous

Civil Application No. 3 of 2012 within a period of six months from today.

8. The Writ Petition is disposed of in above terms with no order as to costs.

9. This Court puts on record appreciation for the assistance rendered by Mr. Jaydeep Deo, learned counsel of this Court.

(MADHAV J. JAMDAR, J.)