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

WRIT PETITION NO.5951 OF 2019

Rajashri Ajay Sawant ...Petitioner

V/s.

Shri. Mahesh Mohanrao Dalvi & Anr. ...Respondents

**WITH
WRIT PETITION NO.10504 OF 2019**

Rajashri Ajay Sawant ...Petitioner

V/s.

Shri. Mahesh Mohanrao Dalvi & Anr. ...Respondents

Mr. S. D. Patil, for the Petitioner in both the Writ Petitions.

Mr. B. K. Raje, for Respondent No.1 in both the Writ Petitions.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 17th MARCH, 2023**

P.C.:

1. Heard Mr. Patil, learned counsel appearing for the Petitioner i.e. original Plaintiff and Mr. Raje, learned counsel appearing for the Respondent No.1 i.e. Original Defendant in both the Writ Petitions.

2. The Petitioner i.e. Plaintiff claims to be the tenant and has filed Declaratory Suit bearing R.A.D. Suit No.471 of 2007

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seeking declaration of her tenancy.

3. The Petitioner-Rajashri Ajay Sawant and the Respondent-Mahesh Mohanrao Dalvi both are near relatives. The Respondent No.1 is the brother of the Petitioner.

4. In Writ Petition No.5951 of 2019, the challenge is to the order dated 23rd March, 2018 passed by the learned Judge of the Small Causes Court at Mumbai below Exh.49 in R.A.D. Suit No.471 of 2007.

5. In Writ Petition No.10504 of 2019, the challenge is to the legality and validity of the order dated 6th February, 2019 passed by the Revisional Court of the Small Causes Court at Mumbai in Revision Application No.403 of 2018 in Exh.67 in R.A.D. Suit No.471 of 2007.

6. The Petitioner-Rajashri Ajay Sawant was absent on 18th March, 2017 after filing her affidavit of evidence and, therefore, her cross-examination could not be conducted. Therefore, the learned Judge of the Small Causes Court at Mumbai passed order dated 18th March, 2017 directing that, if, the Plaintiff fails to appear for cross-examination then, her affidavit of evidence and documents will not be considered and her suit will be dismissed for default. By the order dated

8th June, 2017, it was recorded that, on 22nd March, 2017, the Plaintiff appeared and she was cross-examined to some extent but, thereafter, again she has not appeared and, therefore, by the said order dated 8th June, 2017, her cross was closed and the Defendant was directed to lead evidence.

7. Thereafter, the Petitioner i.e. the Plaintiff filed Application bearing Exh.-42 for recall of the said order dated 8th June, 2017 and, accordingly, the said Application was allowed subject to costs of Rs.5000/- [Rupees five thousands only] and the said order dated 8th June, 2017 was recalled and the matter was adjourned for cross-examination of the Plaintiff.

8. Thereafter, another Application bearing Exh.-43 was filed by the Petitioner i.e. Plaintiff for recall of the said order dated 18th September, 2017, whereby cost of Rs.5000/- was imposed. In the said Application, it has been stated that, she is getting maintenance of Rs.4000/- from her husband and, her son was hospitalized and medical expenses were borne by NGO and other Doctors and, therefore, she is not in a position to pay said cost and even to pay fees of the Advocates. However, the said Application was rejected by the

impugned order 22nd November, 2017.

9. It is required to be noted that in the said order dated 22nd November, 2017, none of the reasons given by the Plaintiff in said Application at Exh.-43 were taken into consideration and only consideration was of her conduct of delay in the matter. However, the reasons for said delay were completely ignored.

10. Thereafter, again Application bearing Exh.-47 was filed seeking recall of the order dated 8th June, 2017 and 23rd February, 2018 and the said Application was rejected on 23rd March, 2018. It has been contended before the Court that, the Plaintiff's financial condition is poor and her son is handicap and requires constant medical treatment. The said Application was also rejected without taking into consideration the grounds mentioned by the Petitioner i.e. Plaintiff.

11. It is further significant to note that, another Application was filed on 23rd March, 2018, by which, the Plaintiff showed readiness to pay the cost on the very day. However, the said Application was also rejected by order dated 31st March, 2018.

12. It is admitted position that, today, in the Court, the cheque towards payment of said cost of Rs.5000/- has been handed over by Mr. Patil, learned counsel appearing for the Petitioner to Mr. Raje, learned counsel appearing for the Respondent No.1.

13. It is further significant to note that, *inter alia*, it is the case of the Respondent by filing reply dated 23rd March, 2018 that Petitioner was getting maintenance of Rs.6000/- and not of Rs.4000/-. It is the further contention of the Respondent that, she is staying with her husband who is working in BEST. The said contentions are contradictory with each other and, the fact that the Petitioner is getting maintenance of Rs.6000/- per month clearly shows that, she is not staying with her husband. It is the contention of Respondent No.1 that, the Petitioner has mislead the Court as she represented to the Court that, she is getting only maintenance of Rs.4000/- and actually, she was getting maintenance of Rs. 6000/-. The exact quantum of maintenance which the Petitioner is getting is not at all relevant for the present dispute. What is important to note is that, the financial condition of the Petitioner is not good, even if, case of the

Respondent that she is getting maintenance of Rs.6000/- and not Rs.4000/- is accepted. Mr. Raje, learned counsel appearing for Respondent No.1 has not controverted that son of the Petitioner suffers from physical disability requiring extensive medical treatment. Therefore, the reasons given by the Petitioner in her Application are genuine reasons.

14. For the above reasons, the Writ Petition No.5951 of 2019 is allowed by setting aside the order dated 22nd November, 2017 passed below Exh.-43, the order dated 23rd March, 2018 passed below Exh.-47 and the order dated 31st March, 2018 passed below Exh.-49 in R.A.D. Suit No.471 of 2007. Accordingly, the Writ Petition No.5951 of 2019 is allowed.

15. Thus, resultantly the order passed below Exh.-42 in R.A.D. Suit No.471 of 2007 is restored, by which, the order dated 8th June, 2017 was recalled and matter was kept for cross-examination of the Plaintiff. Resultantly, the matter to start before the learned Trial Court from the stage of cross-examination of the Plaintiff.

16. As far as the Writ Petition No.10504 of 2019 is concerned challenge in the said Writ Petition is to the order

dated 6th February, 2019 passed by the Revisional Bench of the Small Causes Court at Mumbai passed in the Revision Application No.403 of 2018 in Exh.67 in R.A.D. Suit No.471 of 2017. By the said impugned order, the Revision Application was allowed and the order dated 20th July, 2018 passed below Exh.-67 was set aside. By the said order dated 20th July, 2018, the learned Judge of the Small Causes Court at Mumbai only allowed production of documents by the Plaintiff. It is to be noted that, when the said order was passed, evidence of Plaintiff was closed.

17. Now, in view of the order passed in the Writ Petition No.5951 of 2019, the said order of closer of evidence of Plaintiff is set aside. Therefore, the order dated 6th February, 2019 passed by the Revision Bench of the Small Causes Court at Mumbai cannot survive and the same is also quashed and set aside.

18. It is the contention of the learned counsel appearing for the Petitioner i.e. Plaintiff that, by the Application bearing Exh.-67 prayer is to allow production on record of the original documents referred in evidence affidavit, as only photocopies were annexed with the evidence affidavit.

Therefore, the Writ Petition No.10504 of 2019 is allowed by setting aside the order dated 6th February, 2019 passed by the Revisional Court of the Small Causes Court at Mumbai in Revision Application No.403 of 2018 in Exh.-67. However, it is clarified that, all the contentions of both the parties regarding evidentiary value of the said documents is expressly kept open. Accordingly, the Writ Petition No.10504 of 2019 is allowed.

19. Both the Writ Petitions are accordingly disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]