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

WRIT PETITION NO.7068 OF 2023

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Sukanraj Kasturchandji Jain

... Petitioner

V/s.

Shivaji Kishan Jadhav

... Respondent

Mr. Yashpal Jain with Ms. Chandani Gupta for the
petitioner.

Mr. M.D. Mali for the respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 6, 2023

P.C.:

- 1.** Challenge in this writ petition is to the orders dated 29 September 2021 and 25 April 2022 passed by the Civil Court.
- 2.** Order dated 23 November 2022 rejects notice of motion taken out by the plaintiff to discard written statement filed on 5 February 2020, additional written statement dated 17 March 2021 and for condonation of delay of 768 days in filing summons for judgment.
- 3.** Order dated 29 September 2021 rejects application for summary judgment taken out by the petitioner under Order 13A of the Code of Civil Procedure, 1908 to pass judgment on plaintiff's case.

4. On perusal of the plaint, it appears that the petitioner in paragraph 11 has invoked powers of the Court under the Commercial Courts Act, 2015. However, in paragraph 13 the petitioner has invoked powers of the Civil Court under Order 37 of the Code of Civil Procedure, 1908.

5. Though the jurisdiction conferred under Commercial Courts Act and Order 37 of the Code of Civil Procedure, 1908 lies with the same Judge; however, the nature of inquiry, procedure and nature of evidence would be different. Capacity to exercise power under both Acts is mutually exclusive and, therefore, it is necessary that the plaintiff should elect which remedy he wants to adopt.

6. The petitioner, therefore, states that the present suit be treated as commercial suit under the provisions of the Commercial Courts Act, 2015. In view of said statement, both the impugned orders need to be set aside. The Court needs to follow procedure as contemplated by Commercial Courts Act, 2015 for commercial suit.

7. Accordingly, orders dated 23 November 2022 and 290 September 2021 are quashed and set aside.

8. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)