

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

WRIT PETITION NO.9613 OF 2021

Sangita Shrikant Bhole Petitioner

Vs.

Santosh Dinesh Talawdekar Respondents

Mr. S. G. Deshmukh a/w. Mr. Ramdas Shelke and Ms. Deepa Kamath for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22nd JUNE 2023.

P. C.

1. Heard. In spite of service by the petitioner through bailiff and by private service none appears for the respondents.

2. The petitioner has come with a grievance that after the Summary Civil Suit No.851/2018 was instituted by the petitioner, the said Summary Suit came to be converted into Commercial Suit No. 163/2020 and was subsequently reconverted and renumbered as Summary Civil Suit No.424/2021.

3. Learned counsel appearing for the petitioner submits that in Summary Suit No.851/2018, writ of summons was duly

served on respondent-defendant. He would further submit that by converting Summary Civil Suit into Commercial Suit No.163/2020 and thereafter reconverting the Commercial Suit into Summary Civil Suit No.424/2021, City Civil Court has relegated the Summary Suit to the stage of issuance of writ of summons and as such rights which has been accrued to the petitioner are lost. He submits that there is no justification for this conversion and re-conversion of the Summary Suit. Learned counsel further submits that objection was raised as regard the conversion of Summary Suit into Commercial Suit *vide* communication dated 30/8/2021. However the same was not redressed.

4. Considered the submissions.

5. The challenge in the petition is that by permitting the respondent to file his appearance in renumbered Summary Civil Suit, the rights which has accrued to the petitioner under the provisions of Order 37 Rule 2(3) of C.P.C. has been taken away. Learned counsel for the petitioner further submit that now the petitioner is directed to take steps as per Order 37 of the CPC.

6. It is not disputed that after Summary Suit was filed in the year 2020, the same was converted into Commercial Suit No.163/2020. The Advocate on record had lodged the writ of summons in the Commercial Suit and has thus acquiesced in the proceedings. It was necessary for the petitioner at that stage to adopt appropriate proceedings to ensure that Summary Suit was retained as Summary Suit and was not converted into Commercial Suit. By lodging of writ of summons, in the converted Commercial Suit the proceedings were relegated to the stage of institution of the plaint and as such the writ of summons was issued. Upon issuance of writ of summons in Commercial Suit No.163/2020, the rights which had accrued under the provisions of Order 37 stood extinguished. Subsequently, thereafter for the reasons best known, the Commercial Suit No. 163/2020 was thereafter again converted and renumbered as Summary Suit No.424/2021. In view of the fact that by issuing writ of summons in Commercial Suit No.163/2020, all rights which the petitioner claimed to have accrued under the provisions of Order 37 of C.P.C. stood extinguished, the position was that the stage in the Suit whether Commercial Suit or renumbered Summary Suit was the stage of

institution requiring the summons to be served afresh upon respondents. In that view of the matter no fault can be found in as much as the petitioner was not diligent and had not approached the Court at the relevant time. However, it must be noted that such a procedure is not desirable in as much as the rights which are accrued to the parties are unsettled by adopting this procedure of conversion, numbering and renumbering the proceedings. As such liberty to the petitioner to adopt appropriate proceedings to question the appearance of the respondents in the freshly renumbered Summary Civil Suit, by taking recourse to the appropriate provisions.

7. The petition stands disposed of on the above terms.

SHARMILA U. DESHMUKH, J.