

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

WRIT PETITION NO. 14321 OF 2022

BSE Ltd. ...Petitioner
Versus
Smt. Indumati Vitthal Karandikar & Ors. ...Respondents

Mr. Jhangir Jejeebhoy a/w Adv. Shweta Dasi i/b Bilawala & Co. for the Petitioner.

Mr. Pradeep J. Thorat a/w Adv. Aditi S. Naikare for the Respondent Nos. 1 & 2.

Mr. Rawindra Samant for the Respondent No. 3.

CORAM : S. G. DIGE, J.

DATE : 6th FEBRUARY 2023.

P.C. :

1. Rule, Rule made returnable forthwith, heard finally by consent of all the parties.
2. The learned counsel for the Petitioner submits that Petitioner is seeking relief of setting aside order dated 25 July, 2022 passed by the Small Causes Court below Exhibit-'71' in RAD Suit No. 1342 of 2020. By the said order, the trial Court has rejected the Application filed by the petitioner to discard the evidence of constituted attorney of Respondent Nos. 1 and 2 i.e. Defendant Nos. 1(a) and 1(b) in suit. The learned counsel further submits that Respondent Nos. 1 and 2 have filed their evidence through constituted attorney. The evidence cannot be led through constituted

power of attorney. The said fact was challenged by the Petitioner before the Trial Court. But, the Trial Court has rejected the contentions of Petitioner by passing order below Exhibit-'71'. Hence, requested to allow the Petition.

3. The learned counsel for the Respondent Nos. 1 and 2 submits that the suit for eviction is filed before the Trial Court by Respondent No. 3. and (declaration of tenancy), who is plaintiff before the trial Court. Petitioner and Respondent Nos. 1, and 2 are added as a party respondent in the said suit. Hence, Petitioner have no right to challenge the evidence filed by the Respondent Nos. 1 and 2 as the Petitioner and Respondent Nos. 1 and 2 are standing on same footing. Hence, requested to dismiss the Petition.

4. The learned counsel for the Respondent No. 3 submits that this Court may pass appropriate order.

5. I have heard learned counsel of all the parties. Perused the order passed by the Trial Court. Admittedly, the Petitioner and Respondent Nos. 1 and 2 are Defendants in the suit filed by the Respondent Nos. 3 before the Trial Court. The Petitioner and Respondent Nos. 1 and 2 are standing on same footing before the trial Court. Hence, I pass following order.

ORDER

- i. Writ petition is dismissed.
- ii. All contentions on merits are kept open.

(S. G. DIGE, J.)