

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

WRIT PETITION NO.4745 OF 2024

Dharamvir Srihansraj @ Ddharamvir Trehan	...Petitioner
V/S	
Shusheela Ravi Kulal & Ors.	...Respondents

Mr. Rammani Upadhyay *for the Petitioner.*
Mr. Ashutosh U. Tripathi *for Respondent No.4.*
Mr. R.S. Pawar, AGP *for Respondent No.5/State.*

CORAM: SANDEEP V. MARNE, J.
DATE : 24 JUNE 2024.

P.C.:

1 By this Petition, Petitioner has challenged order dated 18 March 2024 passed by the Small Causes Court, Mumbai rejecting application at Exhibit-62 filed by the Petitioner seeking permission to cross-examine Plaintiff's witness.

2 I have heard Mr. Upadhyay, the learned counsel appearing for Petitioner and Mr. Tripathi, the learned counsel appearing for Respondent No.4.

3 After having heard the submissions canvassed by the learned counsel appearing for parties, it is seen that the suit has been filed by Respondent

licensors for recovery of possession of the suit premises from the Petitioner/Defendant. In the suit it appears that Defendant was directed to pay compensation at the rate of Rs.20,000/- per month under Order XVA of the Code of Civil Procedure, 1908 (**Code**) vide order dated 17 October 2019. Petitioner/Defendant has not complied with the said order and accordingly the defence of the Defendant has been struck off by order dated 31 January 2023. The order striking of Defendants has attained finality. When the Plaintiff has filed Affidavit-of-examination-in-chief on 23 March 2023 Petitioner/Defendant desire to cross-examine Plaintiff's witness. It appears that an opportunity was granted by the Small Causes Court to cross-examine Plaintiff's witness on law points. However till 26 September 2023 Defendant failed to conduct cross-examination and accordingly "no cross" order came to be passed against the Defendant on 26 September 2023.

4 Defendant thereafter filed application at Exhibit-53 seeking recall of "no cross" order. In the interest of justice, the application at Exhibit-53 was allowed by the Small Causes Court on 4 January 2024 and the "no cross" order dated 26 September 2023 was set aside subject to payment of costs of Rs.500/-. Defendant apparently paid the costs of Rs.500/-. However when the suit was listed on 30 January 2024 Defendant failed to conduct cross-examination of Plaintiff's witness. As a matter of last chance, the suit was adjourned to 12 February 2024. However, on 12 February 2024 Defendant once again sought time to cross-examine Plaintiff's witness on the ground that non-availability of certified copy of certain documents. Observing that last

chance was granted on previous date of 30 January 2024, the Small Causes Court rejected the request for further time to conduct cross-examination and directed that the cross-examination be conducted on 12 February 2024 itself. It appears that again this opportunity of conducting cross-examination on 12 February 2024 was not availed by the Defendant, on account of which, once again “no cross-examination” order was passed on 12 February 2024. Defendant filed application at Exhibit-62 for recall of the order dated 12 February 2024 and for grant of an opportunity to cross-examine the Plaintiff’s witness. By order dated 18 March 2024 the Small Causes Court has rejected the Application at Exhibit-62.

5 The above chronology of event would undoubtedly indicate that the Defendant, who has already lost his defence and who was granted an opportunity to conduct cross-examination on law points, has failed to avail such opportunity for the last more than one year. Plaintiff’s evidence in the present case has been filed on 23 January 2023. On account of non-conduct of cross-examination on law points, first “no cross” order was passed on 26 September 2023. The said order was recalled on 4 January 2024. However Defendant went on seeking adjournments on one count or the other despite this the Small Causes Court granting opportunities on 30 January 2024 and 12 February 2024 to the Defendant to conduct the cross-examination. Considering the above chronology of events, I am of the view that no case is made out for interference in the order dated 18 March 2024. The Defendant is occupying the premises without paying any compensation. His defence has

already been struck off. Repeated opportunities granted to cross-examine Plaintiff's witness on law point are not availed by the Defendant.

6 No interference is therefore warranted in the impugned order dated 18 March 2024. The Writ Petition is being devoid of merits is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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by
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