

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9460 OF 2024****M/s. Dhanlaxmi Builders****....*Petitioners*****V/s.****Ramesh Shankar Patel and Ors.****....*Respondents***

Mr. Dhruva Gandhi *with Ms Jyoti Kukreja i/b. M/s. Vis Legis Law Practice for Petitioners.***Mr. Ashutosh Kaushik** *with Ms Namrata Parmar i/b. M/s. Kaushik and Co. for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.**Dated : 12 July 2024.****P.C. :****MEGHA
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- 1) The challenge in the present Petition is to the orders passed by the Appellate Bench of the Small Causes Court on 9 May 2024 dismissing the Revision Application Nos.9 of 2024 and 14 of 2024 and confirming the order passed by the Small Causes Court on 2 November 2023 on Application at Exhibit 86 refusing to recall the order of 'no evidence' as well as another order passed on 2 November 2023 rejecting the application at Exhibit-87 for permission to lead secondary evidence.

2) It appears that the Plaintiff has instituted R.A.D. Suit No.594 of 2004 for declaration of his status as a tenant, which is pending for the last 20 long years. The Plaintiff apparently closed his evidence on 5 March 2021. Despite grant of repeated opportunities on 31 March 2021, 9 April 2021, 8 June 2021, 9 August 2021, 6 September 2021, 28 September 2021, 18 October 2021 and 13 November 2021 Defendant No.1/Petitioner failed to file his evidence. This left no alternative to the Small Causes Court but to pass order dated 2 November 2023 declining the opportunity of leading evidence to Defendant No.1. One and half years after the date of passing of order of 'no evidence' Petitioner applied for recall of order dated 2 November 2021 in June 2023. This shows casual approach on the part of Defendant No.1 in defending the Suit. In ordinary course, therefore, no interference is warranted in the order passed by the Small Causes Court and by the Appellant Bench. However, what needs to be considered is the fact that the Suit is a declaratory Suit filed by the Plaintiff seeking declaration of his tenancy status. Suit is pending since 2004 and the Plaintiff himself took a long time to lead his own evidence and his evidence came to be closed on 5 March 2021. Thus, Plaintiff himself took time of about 17 long years in completing his evidence. This is the only fact, which needs to be considered in favour of Defendant No.1. For casual approach shown in defending the Suit, the Defendant No.1 is required to be mulct with exemplary costs.

3) Accordingly, the order dated 2 November 2023 passed by the Small Causes Court on application at Exhibit-86 as well as the order dated 9 May 2024 passed by its Appellate Bench in Revision Application No.9 of 2024 are set aside and application filed by the Petitioner at Exhibit-86 shall stand

allowed. So far as order dated 2 November 2023 passed on application at Exhibit-87 is concerned, the said application was filed to seek leading secondary evidence. The application at Exhibit-87 appears to have been rejected mainly because of rejection of application at Exhibit 86. Since the Application at Exhibit 86 is now allowed, the application at Exhibit-87 needs to be restored and decided on its own merits by the Small Causes Court. Accordingly, the order dated 2 November 2023 passed by the Small Causes Court on application at Exhibit-87 as well as the order of the Appellate Bench in Revision Application No.14 of 2024 are set aside. The Application filed by Defendant No.1 at Exhibit-87 shall stand restored, which shall be decided by the Small Causes Court on its own merits. Considering the conduct of the Petitioner/Defendant No.1, he shall pay costs of Rs.1,00,000/- to the original Plaintiff. The costs shall be paid within a period of two weeks.

- 4) With the above directions the Writ Petition is disposed of.
- 5) Mr. Gandhi, the learned counsel appearing for the Petitioner assures the Court that the affidavit of evidence of Defendant No.1 shall be filed within a period of three weeks from today. Considering the fact that the Suit is pending since the year 2004, the Small Causes Court shall accord due priority for its expeditious disposal.

[SANDEEP V. MARNE, J.]