

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

WRIT PETITION NO.10540 OF 2024

Mohammed Nafiz Khan

...Petitioner

vs.

Sakinabai Guamali Porbunderwala

since deceased, through legal heir

1(a) Anil Gulamali Porbunderwala

...Respondent

....

Ms. Aditi Naikare a/w Mr. Pradeep J. Thorat *for the Petitioner.*

Mr. Ravindra M. Mungekar a/w Mr. Suresh D. Barne *for Respondent No.1(a).*

....

CORAM : SANDEEP V. MARNE, J.

DATE : 21 AUGUST 2024

P.C. :

1 By this Petition, Petitioner challenges order dated 12 February 2024 passed by the learned Judge of the Small Causes Court rejecting application at Exhibit-31 filed by him for setting aside *ex-parte* order dated 28 June 2024. The order dated 12 February 2024 was unsuccessfully tested before the Appellate Bench which has proceeded to dismiss Miscellaneous Appeal No.40 of 2024 by order dated 28 June 2024, which is also subject matter of the challenge in the present Petition.

2 I have heard Ms. Naikare, the learned counsel appearing for Petitioner and Mr. Mungekar, the learned counsel appearing for Respondent No.1(a).

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it has transpired that the suit is filed by the Plaintiff in respect of Room No.A/15, Porbunderwala Estate, Chirag Nagar, Ghatkopar (W), Mumbai – 400 086. Ms. Naikare, on instructions, would submit that Petitioner's wife is the tenant in respect of Room No.A/13, Porbunderwala Estate, Chirag Nagar, Ghatkopar (W), Mumbai – 400 086. She would further clarify that Petitioner does not claim any right, title or interest in respect of Room No.A/15. It appears that the suit is filed by Plaintiff by alleging that Petitioner/Defendant is a sub-tenant in respect of Room No.A/15. However Petitioner stoutly denies that he has any relationship with regard to Room No.A/15.

4 Since Petitioner does not claim any right, title or interest in respect of Room No.A/15, I do not see any reason why Petitioner/Defendant needs to even contest RAE & R Suit No.410 of 2018. The only apprehension that Ms. Naikare, expresses is that the decree passed in RAE & R Suit No.410 of 2018 might be used to actually evict the Petitioner from Room No.A/13, of which his wife is the tenant. Mr. Mungekar, the learned counsel appearing for Respondent/Plaintiff would clearly clarify that no reliefs are sought with regard to Petitioner's Room No.A/13.

5 Considering the above agreement prevailing between parties, in my view, it is not really necessary for the Petitioner to contest RAE & R Suit No.410 of 2018. Therefore, challenge to order dated 12 February 2024 passed by the Small Causes Court as well as order dated 28 June 2014 passed by its Appellate Bench has been rendered academic. Accepting the statements

made by the learned counsel appearing for rival parties as recorded above, the Writ Petition is **disposed of**.

6 It is clarified that the decree passed in RAE & R Suit No.410 of 2018 shall not affect possession of Room No.A/13 by Petitioner and/or his wife.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
RAJALINGAM
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Date:
2024.08.23
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