

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.294 OF 2024****Minochar Manikshaw Deboo****....Applicant****V/s.****Naushad Hussain Hakimulla Ansari
and Ors.****....Respondents**

Mr. Bhavik Lalan *i/b. Ms Minakshi Gala for the Applicant.***Mr. Asif Shaikh** *for Respondent No.1.***Mr. Altamash A. Kapadia** *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.**Dated : 25 June 2024.****P.C. :**

1) The limited issue raised in the present civil revision application while setting up a challenge to the Judgment and Order dated 18 January 2024 passed by the Appellate Bench of the Small Causes Court, is the order of remand made to the Trial Court for the purpose of deciding the Suit qua suit premises No.3 afresh. The order of remand is made qua suit premises No.3 by permitting the Plaintiff to lead additional evidence under provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (**Code**). It appears that the Trial Court in its decree has held that the Plaintiff is not the tenant in respect of suit premises No.3 being a godown admeasuring 4x6 sq.ft. on the ground floor of the building. The said finding is recorded inter alia holding that the so called structure described as godown does not even form

part of the building and cannot be treated as tenanted premises. At the appellate stage the Plaintiff filed application under Order 41 Rule 27 of the Code seeking to place on record certain documents describing them to be of 'rent receipts' as well as a 'plan'. The Applicant /Defendant questions the genuineness of the said documents and it is the case of the Applicant /Defendant that the said documents are not the rent receipts in respect of any of the suit premises. The apprehension expressed by the learned counsel appearing for the Applicant is that branding the said documents as 'rent receipts' by the Plaintiff would bind the Trial Court while deciding the suit premises No.3 after remand. He has expressed an apprehension that the Trial Court would be persuaded to treat the said documents as 'rent receipts' when in fact, they are not.

2) In my view in paragraph 29 of the judgment the Appellate Court has already observed that issue of genuineness of the document sought to be produced by the Plaintiff is required to be decided by the Trial Court by permitting the parties to lead oral evidence. Therefore, the documents sought to be produced as Annexure-A colly alongwith application filed under Order 41 Rule 27 of the Code cannot be presumed to be genuine rent receipts unless their genuineness is proved by the Plaintiff by leading evidence.

3) It is therefore, clarified that though the concerned documents are described as rent receipts by the Appellate Court in its judgment, the Trial Court shall not proceed to presume the said documents as if they are indeed the rent receipts and the issue as to whether they are genuine rent receipts or

not shall be decided on the basis of evidence adduced by the parties. In my view this clarification sufficiently protects the interest of the revision Applicant.

- 4) With the above clarification, revision application stands disposed of.

[SANDEEP V. MARNE, J.]