



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16184 OF 2024

Santosh Vasant Dighe

...Petitioner

V/s.

Norbert Augustine Dsouza

...Respondent

Mr. Ashok S. Gawai *for Petitioner.*

Ms. Bijal Chowlera *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 10 MARCH 2026.

P.C.:

1) The Petition challenges order dated 2 April 2024 passed by the Small Causes Court rejecting the Application at Exh-45 filed by the Petitioner-Defendant under Section 151 of the Code of Civil Procedure, 1908 seeking dismissal of the suit on the ground that permission of the Competent Authority under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was not obtained.

2) I have heard Mr. Gawai, the learned counsel appearing for the Petitioner and Ms. Chowlera, the learned counsel appearing for the Respondent.

3) It is seen that Petitioner's mother had filed similar Application in respect of adjoining structure, which has been rejected on the same day (2 April 2024), by the learned Small Causes Court. Mother's Writ Petition (ST) No. 12963 of 2024 challenging order dated 2 April 2024 passed in her suit has been dismissed by this Court by order dated 12 June 2024 which reads thus:

1. The challenge in the present Petition is to the order dated 2 April 2024 passed by the Small Causes Court rejecting Application (Exhibit-45) of the Petitioner filed under section 151 of Code of Civil Procedure (Code) seeking dismissal of the suit. Petitioner sought dismissal of the suit on the ground that permission of the Competent Authority under section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) was not obtained in respect of her. It appears that Petitioner's application was initially rejected by the Small Causes Court by order dated 21 December 2022 merely on production of permission of the Competent Authority dated 11 November 2016. Petitioner challenged the order dated 21 December 2022 before this Court by filing Writ Petition No.1732 of 2023 in which a grievance was raised that slum dweller at serial no.14 of list of Respondents in order dated 11 November 2016 (Shobha Dighe) is not the Petitioner. This Court therefore set aside the order dated 21 December 2022 and remanded the matter to the Trial Court to decide the same afresh after considering submissions of both the parties. Liberty was granted to both the parties to file necessary material.

2 In the remanded proceedings, the landlord filed Additional Affidavit and produced copy of Vakalatnama signed by Petitioner – Vanita Vasant Dighe on 30 August 2016 in the proceedings filed before the Competent Authority. The landlord also produced another Vakalatnama signed by Petitioner appointing Mr. Ashok Shivaji Gavai, Advocate to represent her in proceedings before the Competent Authority. The written submissions filed by the said Advocate appointed by the Petitioner on 19 August 2016 were also produced before the Small Causes Court. The landlord took his stand before the Small Causes Court that Petitioner-Vanita Dighe is also known in the vicinity by the name Shobha which is the reason why her name came to be reflected in the application before Competent Authority as Shobha Dighe. Plaintiff demonstrated before the Small Causes Court that Petitioner participated in proceedings before the Competent Authority. After considering the material produced on

record, the Small Causes Court has once again proceeded to reject the Application filed by the Petitioner. Aggrieved by the order dated 2 April 2024, the present Petition is filed.

3. I have heard Mr. Shekhawat, the learned counsel appearing for the Petitioner and Mr. Chowlera, the learned counsel appearing for Respondent/Plaintiff.

4. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that though the name "Shobha Dighe" was reflected at serial no.14 of list of Respondents in the Application filed before the Competent Authority seeking permission under section 22 of the Slum Act, the Petitioner apparently received notice/summons of those proceedings. The learned counsel for the Petitioner Mr. Shekhawat fairly admits that the notice was received by the Petitioner in the slum structure occupied by them. After receipt of the notice, Petitioner appeared before the Competent Authority and appointed Mr. Ashok Shivaji Gavai as her Advocate by signing Vakalatnama on 1 August 2016. Later the Advocate was changed and Petitioner appointed Advocate Mr. C.M. Gandhi by signing Vakalatnama. Interestingly, perusal of the said Vakalatnama dated 30 August 2016 indicates that the Petitioner has signed at serial no.14 of signatories to the said Vakalatnama.

5. The Advocate appointed by the Petitioner filed written submissions before the Competent Authority. The Petitioner has thus fully participated in the proceedings before the Competent Authority by representing before the Competent Authority that she is the same person at serial no.14 of the list of the Respondents before the Competent Authority. The real objective behind grant of an opportunity of hearing before deciding application under Section 22 of the Slum Act is to ensure that the concerned slum dweller is heard before grant of permission for filing of suit for eviction of a slum dweller. This opportunity is clearly and admittedly availed by the Petitioner. Now she wants to take benefit of technicality as the name "Shobha Dighe" is reflected in the list of Respondents at serial no.14 before the Competent Authority. In my view, since Petitioner voluntarily participated in the hearing before the Competent Authority, she cannot now take a volte-face and contend that she is not the same person to whom notice was issued. In my view, therefore, the Small Causes Court has rightly rejected the application filed by the Petitioner. No serious error is traced in the order passed by the Small Causes Court. Writ Petition is devoid of merits, is dismissed without any order as to costs.

4) Thus, similar order passed in suit filed against Petitioner's mother has already been upheld by this Court vide order dated 12 June 2024.

5) Even otherwise, Plaintiff has come out with a case that there is a permission granted by the Competent Authority under Section 22 of the Slum Act. Whether the permission is valid and whether the same pertains to the suit structure are triable issues which cannot be decided in Application filed under Section 151 of the Code. The Petitioner's Application is rightly rejected by the Trial Court. No interference is warranted in the impugned order.

6) Writ Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]