

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2745 OF 2014

Govindlal S/o Ramkishan Sarda,
Since deceased through legal representative
Jugalkishor Govindlal Sarda,
Age: 55 years, Occu. Business,
R/o. Lohar Galli, Nanded

...PETITIONER
(Orig. Defendant No. 1(2))

VERSUS

- 1) Bajrang Narsingh Rao Bandel,
Age : 61 years, Occu. Retired,
R/o. VIP Road, Nanded,
Dist. Nanded
- 2) Shankar Narsingh Rao Bandel,
Age : 71 years, Occu. Retired,
R/o. VIP Road, Nanded,
Dist. Nanded
- 3) Omprakash Govindlal Sarda,
Age : 60 years, Occu. Business,
R/o. Lohar Galli,
Dist. Nanded
(Died through its L.Rs. i.e.
respondent Nos. 3A to 3D)
- 3A) Ashadevi Omprakash Sarda,
Age: 56 years, Occu. Household,
R/o. Lohar Galli, Nanded,
Dist. Nanded
- 3B) Anand Omprakash Sarda,
Age: 38 years, Occu. Business,
R/o. Lohar Galli, Nanded,
Dist. Nanded
- 3C) Ashish Omprakash Sarda,
Age: 35 years, Occu. Business,
R/o. Lohar Galli, Nanded,
Dist. Nanded

- 3D) Shriram Omprakash Sarda,
Age: 32 years, Occu. Chartered Accountant,
R/o. Lohar Galli, Nanded,
Dist. Nanded
- 4) Rakeshkumar Govindlal Sarda,
Age : 50 years, Occu. Business,
R/o. Lahor Galli, Nanded,
Dist. Nanded
- 5) Shakuntala W/o Ramkishan Laddha,
Age : Major, Occu. Household,
R/o. Manwat,
Parbhani
- 6) Gangadevi Rajendra Rathi,
Age : Major, Occu. Household,
R/o. Satona, Tal. Partur,
Dist. Jalna
- 7) Jyoti Umeshkumar Zanwar,
Age : Major, Occu. Household,
R/o. Aurangabad
- 8) Manju Ishwar Rathi,
Age : Major, Occu. Household,
R/o. Akola

And/Or
Govind DalMill, VIP Road,
Nanded

..RESPONDENTS
(Nos. 1 & 2-Orig.
Plaintiffs, Nos. 3 to 8-
Orig. Defendants)

Mr A. N. Sabnis, Advocate for petitioner;
Mrs G. L. Deshpande, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 30th March, 2015

ORAL ORDER :

The petitioner/original defendant No.1 (2) moved an application Exh.369 for setting aside 'no w.s.' order passed against him.

2. The cause for moving the said application was the death of original defendant on 2nd March, 2005, who was facing a suit for eviction on various grounds under the Maharashtra Rent Control Act.

3. After the death of original defendant, the present petitioner was brought on record as a legal representative. Prior to the death of original defendant, the said defendant had already filed written statement and trial had reached at a concluding stage, i.e. for final arguments. At such stage, the present petitioner moved application Exh.369, which came to be partly allowed by 2nd Joint Civil Judge Senior Division, Nanded, by his order dated 21st February, 2014. The petitioner herein, being legal heir of original defendant, was permitted to adopt the written statement of his father, by setting aside 'no w.s.' order, however, his prayer for permitting him to file additional written statement including permission to plead additional facts, came to be rejected. Thus, the present petition.

4. Mr Sabnis, learned Counsel appearing on behalf of the petitioner, while questioning rejection of prayer for filing additional written statement so as to bring on record additional facts, has urged that the said prayer is

required to be considered in the light of provisions of sub-rule (2) of Rule 4 of Order XXII of the Code of Civil Procedure, which read thus :-

“Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. “

He would further urge that denial of such opportunity amounts to denial of hearing and as such has sought to place reliance on the judgment of the Apex Court in the matter of **Sumtibai & ors. vs. Paras Finance Co. Regd. Partnership firm Beawer (Raj.) through Mankanwar (Smt.) w/o Parasmal Chordia (dead) & ors.**, reported in **(2007) 10 SCC 82**. With a view to support his contention, learned Counsel has invited attention of this Court to the pleadings in paragraph 4 of the application Exh.369, which read thus :-

“That, the plaintiff has filed the suit for eviction on various grounds out of which one of the ground is that the plaintiff requires the suit property for their *bona fide* requirements and for the requirement of their family members. The plaintiff has during the pendency of the suit and that too in last about one year got their earlier tenants evicted from their portion and in their place the plaintiff has given the shops on rent to others. Beside this some of the tenants has vacated their portions / godowns and in that place plaintiff had given one of the godown to other tenant. The tenants which were in possession of the remaining portion are given in para No. 3 of written statement filed by defendant. Most of the tenants had

vacated and new tenants came in their place. This fact clearly shows that the plaintiff do not want the suit property for their *bona fide* requirement. The said facts are required to be brought on record.”

As such, according to him, the application ought to have been allowed by the Trial Court. Thus, he prayed that this Court should set aside the order rejecting the permission to file additional written statement.

5. Learned Counsel appearing on behalf of respondent no.1/original plaintiff would urge that the suit instituted by the landlord seeking possession of the leased premises for his *bona fide* need is pending since 2005 and has reached at advanced stage, as according to her, it is fixed for final arguments. She would further urge that filing of the written statement by original defendant, who died on 2nd March, 2005, is not in dispute. In law, what is identified *qua* the status of the present petitioner is that, he steps in the shoes of his father, being legal heir and cannot have better claim than his father, while defending the suit. She would further urge that the stage at which the Trial Court has shown indulgence by permitting the present petitioner to adopt the written statement shows sufficient compliance of natural justice and submits that the aspect of interest of justice was well within the mind of the learned Trial Court while granting permission to the present petitioner to adopt the written statement filed by the original defendant. She would further urge that the law cited by the learned Counsel appearing on behalf of the petitioner, in the matter

of Sumtibai & ors. (cited supra), on facts, has hardly any application to the instant case, as according to her, though the provisions of Order 22 of the Code of Civil Procedure are applicable to the event that has occurred in the case, the Court below has rightly applied its mind to the facts of the instant suit and has granted the prayer of the present petitioner. According to her, the petition, therefore, deserves to be rejected.

6. Having dwelt upon the controversy sought to be put-forth before this Court, it is required to be noted that admittedly, the present petitioner is legal heir of original defendant and as such was impleaded in the suit at the stage when the suit was fixed for final arguments. The fact remains that the original defendant, i.e. father of the petitioner had filed his written statement Exh.17, based on which the issues were framed, evidence was adduced and the suit having achieved considerable progress, has reached the stage of arguments.

7. The present petitioner was not diligent enough. Though he was knowing about pendency of the suit, has not filed the written statement or has not taken steps for doing so, as is apparent from the contents of the application Exh.369. When the suit was fixed for arguments, application Exh.369 came to be filed seeking relief of setting aside 'no w.s.' order passed against him. The Trial Court, though has shown sufficient indulgence in the light of right of the petitioner recognized under Order

XXII, Rule 4 of the Code of Civil Procedure, has refused permission to bring on record additional facts. In my opinion, the Trial Court has rightly done so, in the light of the fact that the suit has reached at the stage of arguments.

8. In paragraphs 4, 7, 8 and 15 of the judgment, in the matter of Sumtibai & ors. (cited supra), the Apex Court has observed thus :-

“4. The appellants are the legal representatives of late Kapoor Chand. A suit was filed by the respondent herein against Kapoor Chand for specific performance of a contract for sale. It was alleged that Kapoor Chand had entered into an agreement to sell the property in dispute to the respondent - plaintiff, M/s. Paras Finance Co. In that agreement Kapoor Chand stated that the property in dispute was his self-acquired property. During the pendency of the suit Kapoor Chand died and his wife, sons etc. applied to be brought on record as legal representatives. After they were impleaded they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC praying, inter alia, that they should be permitted to file additional written statement and also be allowed to take such pleas which are available to them. The trial court rejected this application against which a revision was filed by the appellant which was also dismissed by the High Court. Hence this appeal by special leave.

7. Before advertng to the question involved in this case, it may be noted that in the registered sale deed dated 12.8.1960 the shop in dispute has been mentioned and the sale was shown in favour of Kapoor Chand and his sons, Narainlal, Devilal and Pukhraj. Hence, the registered sale deed itself shows that the purchaser was not Kapoor Chand alone, but also his sons as co- owners. Hence, prima facie, it seems that the sons of Kapoor Chand are also co-owners of the property in dispute. However, we are not expressing any final opinion on the question whether they are co-owners as that would be decided in the suit. But we are certainly of the opinion that the legal representatives of late Kapoor Chand have a right to take this defence by way of filing an additional written statement and adduce evidence in the suit. Whether this defence is accepted or not, of course, is for the trial court to decide. Hence, in our opinion, the courts below erred in law in rejecting the applications of the heirs of Kapoor Chand to file an additional written statement.

8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) CPC cannot be construed in the manner suggested by learned counsel for the respondent.

15. Also, merely because some applications have been rejected earlier it does not mean that the legal representatives of late Kapoor Chand should not be allowed to file an additional written statement. In fact, no useful purpose would be served by merely allowing these legal representatives to be impleaded but not allowing them to file an additional written statement. In our opinion, this will clearly violate natural justice.”

If we compare the factual matrix which fell for consideration before the Apex Court in the reported case, the apparent distinguishing factor appears to be that, in the case before the Apex Court a suit for specific performance was pending. The Court was alive to the subsequent developments *qua* parties to the said suit after the death of original defendant, which were having direct bearing over the issue sought to be raised in the suit, which were in relation to the registered sale deed dated 12th August, 1960, in respect of the disputed shop showing the same in favour of the original defendant and his sons and other parties, whereas in the present case what is sought to be brought on record is the eviction of the other tenants from the property and letting out of such property to other tenants. Rather in para 10 onwards of the said judgment, the Apex Court has discussed the parameters which are to be taken into account while applying the law laid down in other similar cases.

9. So far as subsequent developments which are sought to be brought on record are concerned, the law on the said issue is well settled, i.e. the prayer for eviction *qua* bona fide need or other grounds, is required to be considered as were existing on the date of filing of such suit.

10. In view of above, in my opinion, the support sought by the learned Counsel for the petitioner for the cause in issue, from the judgment of the Apex Court, in the matter of Sumtibai & ors. (cited supra), will hardly be of any assistance.

11. In view of above, no illegality could be noticed in the impugned order. The writ petition thus fails and stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

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