

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6044 OF 2015

Haribaksh B. Lalwani
(deceased through heirs
1A. Shri. Kisan H. Lalwani and ors) .. Petitioners

vs.

Indumati V. Karekar
(deceased through heirs
1A. Hemlata D. Potdar and anr) & ors. .. Respondents

Mr. Sandeep Koregave for the Petitioners.

Mr. B.K. Barve a/w. Mr. Prashant D. i/b B.K. Barve & Co. for
Respondent Nos.1A and 1B.

CORAM : M. S. SONAK, J.

DATE : 14 AUGUST 2015.

P.C. :-

1] This petition challenges the order dated 9 April 2015 by which the Trial Court has rejected the petitioners' application for amendment to the written statement.

2] The amendment was applied for at the stage when the plaintiff has already concluded his evidence. It appears that some time in March 2015 also, the petitioners had applied for and was granted leave to amend the written statement. The amendment merely seeks to place on record that the respondent Nos.1A and 1B, after institution of the suit seeking eviction has acquired two rooms through the Court proceedings and consequently such additional premises are available with the respondent Nos.1A and 1B. Now if the written statement originally filed some time after the suit was instituted in the year 1990 is perused, the contention that the respondent Nos.1A and 1B has additional premises is already taken,

the proposed amendment does not contain any details. According to the learned counsel for the respondent Nos.1A and 1B, the two rooms were acquired through the Court wayback in 1994. In such circumstances, there are pleadings in the written statement in the context of acquisition of additional premises. The amendment is a mere surplusage. There is no explanation whatsoever as to why the amendment could not be applied for earlier. True, that the suit itself has been dismissed for default in the year 1994 and restored in the year 2011. Nevertheless, in March 2015, the petitioners had applied for and availed leave to amend. Now that the evidence of the plaintiff is concluded, there is no case made out for seeking any further leave to amend the written statement, particularly in the context of Schedule of the amendment proposed in the present case.

3] There is no jurisdictional error in making the impugned order. Accordingly, this petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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