

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

WRIT PETITION NO. 158 OF 2014

Balasaheb Gangaram Vadsule & ors. ... Petitioners

v/s

Kisan Mohanlal Heda & ors. ... Respondents

Mr.Kiran Jain i/by Kiran Jain & Co. for the petitioners.

Mr.Amit Borkar for respondent Nos.1 to 4.

CORAM: NITIN M. JAMDAR, J.

DATED : 23RD MARCH, 2015

P.C.:

Heard learned counsel for the parties.

2. By this petition, the petitioners challenge the order passed by the learned District Judge, Kolhapur, dated 29 September 2013, rejecting the application filed by the petitioners for amendment of the written statement at the stage of final hearing of the appeal filed by the respondents.

3 The respondents filed a suit for possession of the suit property. The possession was sought on the ground of requirement of the respondent landlord. The learned Civil Judge, Kolhapur, came to the conclusion that the respondent landlord proved that

the suit premises were required for immediate demolition. The learned Judge also held that the respondent landlord proved that the demolition was for the purpose of erection of new building. The learned Judge, however, declined relief of possession to the respondents on the ground that requisite undertakings were not furnished by the respondent landlord. The undertaking showing the area, which was sought to be handed over back to the petitioners, was not furnished by the respondents.

4. The respondents thereafter filed an appeal in the District Court, Kolhapur. In the appeal, respondents sought to place on record the undertaking along with map/plan. They were allowed to be placed on record by the learned District Judge. The petitioners thereafter filed an application for amendment of the written statement which was rejected by the impugned order.

5. The appeal is now fixed for final hearing. The learned District Judge has rightly observed that the contention as regard the production of the undertaking and plan, at the appellate stage, can be raised by the petitioners in their argument and it is not necessary to amend the written statement for that purpose. The fact that the respondents have produced this undertaking for the first time in appeal, is not disputed. What is the effect of production of this document at the appellate stage and whether the respondents can rely upon them at this stage, are matters of

argument which the petitioners can always canvass. It is clarified that, because the application of the petitioners for amendment of the written statement is not granted, it does not mean that the arguments of the petitioners are foreclosed. It will be open to the petitioners to agitate all questions as regard the production of the undertaking and plan at the appellate stage, by the petitioners.

6. In view of this clarification, which adequately protects the interest of the petitioners, no further orders are required to be passed in this petition.

7. The writ petition is accordingly disposed of by keeping all contentions of the parties open.

(NITIN M. JAMDAR, J.)