

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

WRIT PETITION NO. 733 OF 2015

Ashok Shantaram Nalekar

..Petitioner

Vs.

Anant Shantaram Nalekar and Anr.

..Respondents

....

Mr. S.S. Redekar, Advocate for Petitioner.

Mr. Sachin Shetye, Advocate for Respondent.

....

CORAM : N.M. JAMDAR, J.

DATED : 28 APRIL 2015

ORAL ORDER:

By this petition, the petitioner challenges the order passed by the Appeal Bench of Small Causes Court, Mumbai permitting the Respondent No.1 to amend the plaint during the hearing of the appeal.

2. The Respondent No.1 filed R.A.D. Suit No. 752/2009 in the Small Causes Court, Mumbai seeking declaration of tenancy. In the plaint, suit premises is described as House No. 122-N, Bhagyawan Chowk, Worli Koliwada, Mumbai. The learned Small Causes Court Judge dismissed suit by judgment and order dated 24 April 2013. The learned Small Causes Court held that the Respondent No.1 was not a tenant of the entire suit premises.

3. It is come on record that the suit premises are of five rooms. Out of that, four rooms are in occupation of some other tenant. In the appeal, the Respondent No.1 moved an application for amendment stating that the tenancy is not claimed in respect of five rooms but in respect of one room i.e. Room No.2, which is stated to be in possession of the Respondent No.1.

4. Considering the facts and circumstances, the impugned order passed by the Appeal Bench permitting such amendment, which only specifies the suit property, by giving more particulars, is not perverse. As regard the contentions of the petitioner that such stand cannot be taken in the light of the finding of the Small Causes Court, it is on the merits of the amendment carried out and it's legal effect. Though I am inclined not to interfere with the impugned order, it is clarified that all contentions of the petitioner as regards the merits of the amendment and effect thereof, and the stage at which it is introduced, are kept open to be agitated in the appeal.

5. The writ petition is accordingly rejected, with the above clarification. Needless to say that it will be open to the petitioner to file an additional written statement, if so advised, as regard the amended portion.

(N.M. JAMDAR, J.)