

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3559 OF 2014

Mukund Ishwar Mahajan.] ... Petitioner

Versus

Mr. Mahendra Kantilal Shah & Ors.] ... Respondents

Mr. Jaydeep S. Deo for Petitioner.
Mr. Venkatesh A. Shastry for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- SEPTEMBER 03, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. This petition challenges order dated 12/11/2013 by which the Trial Court has rejected the Petitioner's-Plaintiff's application seeking leave to amend the plaint.
4. It is the case of the Petitioner that the suit premises, in respect of which the Petitioner has applied for declaration of tenancy, has since been demolished. The Petitioner seeks to place this

circumstance on record and seek certain consequential reliefs. The amendment was applied for prior to the commencement of the trial in the suit.

5. The Trial Court, has rejected the application at Exh.51 by observing that the suit premises had already been demolished on the date of filing of the suit and therefore, the tenancy was not in existence. The Trial Court has also observed that there is no *prima facie* evidence that the Plaintiff was a tenant and he was residing in the suit premises by paying rent to the Defendants. The Trial Court, in such circumstances, held that prayer for possession of equivalent area in the new building will amount to the change in the nature of the suit.

6. Having heard the learned Counsel for parties and perused the record, I am unable to agree with the view taken by the Trial Court. This is because, the Trial Court is not required to go into the merits of the matter at the stage of grant of leave to amend. At this stage, there was no question of making any observation that the tenancy itself was not in existence or that the prayer which the Petitioner seeks to introduce, cannot be granted. These are matters to be decided at the stage of final hearing of the suit after, the pleadings are amended and the parties lead their evidence in the matter.

7. As noted earlier, the amendment was applied for prior to the commencement of the trial. In such circumstances, a liberal

approach is warranted. By permitting amendment, there is no question of change in the nature of the suit as observed by the Trial Court. For all these reasons, the impugned order is required to be set aside and the same is hereby set aside.

8. It is however necessary to take cognizance of the submissions of Mr. Venkatesh A. Shastry, learned Counsel for Respondents, that the amendment was unnecessary and merely constitutes a repetition. Mr. Shastry is right in his submission that if the records of the Court are being unduly burdened and litigation is being protracted to the prejudice of the Respondents, such issue should be considered at the stage of grant of leave to amend. In my judgment, however, this circumstance, assuming it exists, is not sufficient for rejecting an application seeking leave to amend. Such circumstance, however, is relevant in the matter of deciding the issue of costs.

9. Further, Mr. Shastry is right that in case leave to amend is granted, the Respondents should have every opportunity to file an additional written statement or to amend the existing written statement in order to meet with the case as introduced by way of amendment. This includes the right to raise the issue of jurisdiction of the Court to entertain or proceed with the suit.

10. Accordingly, the impugned order is set aside. Leave to amend, as prayed for in Exh.51, is granted. Necessary amendment to be carried out within a period of 6 weeks from today. Such leave is

granted subject to the payment of costs of Rs.5,000/- (Rupees Five Thousand Only) within the aforesaid period of 4 weeks. In case there is failure to pay/deposit costs, then the petition shall be deemed to have been dismissed.

11. The Respondents-Defendants in the suit are entitled to file additional written statement/s in response to the amended plaint. Therein, the Respondents-Defendants are entitled to raise the issue of jurisdiction.

12. It is made clear that this Court has not examined the matter on merits and therefore the observations made either in the impugned order which is hereby set aside or for that matter, the present order, are only for the purposes of deciding the issue of leave to amend. The Trial Court, therefore, need not be influenced by such observations at the stage of final disposal of the suit.

13. Rule is accordingly made absolute in the aforesaid terms. Liberty, as aforesaid, is also granted to the Respondents-Defendants. The Respondents-Defendants to file additional written statement/s within a period of 4 weeks within the service of amended copy of the plaint.

14. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.