

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1781 OF 2015

Mrs. Sandima Manoj Mahimkar .. Petitioner  
vs.  
Smt. Lila Sarvottam Mahimkar & Anr. .. Respondents

Mr. Pradeep J. Thorat for Petitioner.  
Mr. Sameer R. Bhalekar for Respondent No. 1.

**CORAM : M. S. SONAK, J.**  
**DATE: 11 JUNE 2015**

**P.C. :-**

1] This petition challenges order dated 13 January 2015 made by the Small Causes Court dismissing the petitioner's application for deletion of issue no. 4, which reads thus :

*"4. Does Defendant No. 1 prove that she become a tenant and possessed the Suit premises by way of devolution?"*

2] In this case, the issues were framed way back on 4 February 2011. The petitioner, who is the plaintiff in the suit filed her affidavit in lieu of examination-in-chief as well as additional affidavit to the same effect. At the stage when the petitioner's cross-examination was in progress, the petitioner, on 9 January 2015, applied for deletion of the aforesaid issue no. 4. This petition is directed against the order dated 13 January 2015, by which such application came to be rejected.

3] The petitioner, in her plaint has asserted that she is the tenant in respect of the suit premises. The respondent no. 1 herein, who is the defendant no. 1 in the suit, by filing a written statement as well as additional written statement has asserted that it is the respondent no. 1, who is the tenant in respect of the suit premises. The circumstances, in which the respondent no. 1 claims tenancy to the suit premises have also been substantially set out in the written statement and the additional written statement. In this view of the matter, it cannot be said that there was any error, much less error of jurisdiction in framing issue no. 4.

4] The petitioner also appears to be aware of the aforesaid position which is evident from the fact that though the issues were cast way back on 4 February 2011, the petitioner took no steps whatsoever to seek deletion of the aforesaid issue. On basis of the issue so cast, the petitioner also proceeded to file her affidavit in lieu of examination-in-chief and further an additional affidavit. It is only at the stage when the petitioner was being cross-examined that the application in question came to be filed. Although, the Court is empowered to recast the issues at any stage. This is clearly not a case where such recast is warranted. This is not a case where it can be said that there are no pleadings whatsoever, which give rise

to the issue in question. The pleadings, have to be construed in a liberal manner and not in a pedantic fashion as suggested by the petitioner. The deletion of the issue in question is neither warranted and in fact would promote multiplicity of proceedings.

5] Accordingly, there is no reason to interfere with the impugned order. This petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand) which the petitioner shall pay to the respondent no. 1 within a period of two weeks from today.

6] Since on the basis of the application, which has been dismissed by the impugned order, the petitioner has delayed the proceedings for a period of almost four years and the respondent is a senior citizen, the learned Small Causes Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of one year from today.

7] All concerned to act on the basis of an authenticated copy of this order.

**(M. S. SONAK, J.)**