

Sequeira

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

WRIT PETITION NO.2368 OF 2015.

Century Textiles and
Industries Limited

.. Petitioner

Vs.

Nusli Nevile Wadia.

.. Respondent

Mr.Kevic Setalwad, Senior advocate a/w Mr.Bomi Patel i/b Harish Joshi & Co., for the petitioner.

Mr.Rafiq Dada, Senior advocate a/w Zal Andyarujna, Mr.Rahul Dwarkadas and Ms Prachi Dhanani i/b Wadia Ghandy & Co., for the Respondent.

***CORAM: N.M.Jamdar J.
Tuesday 17 March, 2015***

PC.:

By this petition, the Petitioner challenges the order passed by the appellate bench of the Small Causes Court dated 2 February 2015 dismissing the Revision application and confirming the order passed by the Small Causes Court Judge dated 28 January 2014, partly allowing the application filed by the Petitioner in respect of framing of issues.

2. A Lease deed was executed on 18 July 1898 between the Petitioner and Respondent for a period of 999 years. A communication was issued by the Respondent on 7 July 2009 expressing his intention of terminating the lease. T.E Suit

No.115/158 of 2009 was filed by the Respondent on the ground that the Petitioner has committed various breaches and the Respondent is entitled to possession of the leasehold property. On 11 September 2012, the learned Small Causes Court allowed the application for amendment filed by the Respondent. Thereafter the Petitioner filed Writ petition No.2778 of 2013 challenging the order allowing the amendment. The Writ petition was disposed of by learned Single Judge on 26 March 2013. The learned Single Judge found that no interference was warranted in the order granting amendment and kept all the contentions open.

3. The Petitioner thereafter tendered draft issues which according to the Petitioner were necessary for the adjudication of the dispute. The learned Small Cause Court Judge, by his order dated 28 January 2014 partly allowed the application. The learned Judge permitted draft additional issues at serial no.1, 5 and 7, and Issue Nos.4 and 9 were to be framed with modifications. As regards draft issues at serial nos.2, 3, 6, 8 and 10, the learned Judge found that they were not necessary as they were covered by the issue No.3 already framed. The Petitioner filed a revision challenging the order dated 20.01.2014 before the appellate bench of Small Causes Court, which was rejected on 2 February 2015.

4. Mr.Setalwad, the learned senior counsel submitted that the draft issues were necessary as in view of the amendment which was permitted various additional heads of breach of lease were sought to be introduced. He submitted that prejudice will be caused to

the Petitioner if the proposed issues are included under Issue No.3 already framed as the Petitioner will not be able to lead evidence on these issues. Mr.Setalwad relied upon Civil Manual framed by this Court, more particularly the Chapter for settlement of issues, wherein certain guidelines have been issued. He also relied upon decision of a Division bench of the Bombay High Court reported in **(2009) 6 Bom CR 474 - Shri Ajit Gaitonde & anr. Vs Smt.Ezilda Emiliana Cristina Pinto (since deceased) by C.A-Shri Oskar J.D'Souza & ors.** and the decision of the Apex Court reported in **(2001) 2 SCC 652 – Makhan Lal Bangal Vs Manas Bhunia and others.**

5. Both the learned Small Causes Court Judge and the appellate bench Judge have found that it is not necessary to have various additional issues, as proposed, as Issue no.3 already framed, covers all these questions. Though assuming that it is more convenient to have additional issues and had I heard the matter as the Court of first instance, I would have come to that conclusion, is not a ground for interference under Article 227 of the Constitution of India. Parameters for interference under Article 227 is limited, and the contours are well defined.

6. Both the Courts have noted that all the proposed issues will be considered under Issue No.3, already framed. The Courts have not rejected the application of the Petitioner on the ground that these additional issues are not relevant, but have taken a view that they are already covered. The decisions cited by Mr.Setalwad are

not applicable to the facts of the present case because in the present case an issue is already framed. In the decisions which are cited, no issue was not framed at all to cover the controversy. No illegality is therefore found in the impugned order.

7. As regards the apprehension expressed by Mr.Setalwad that Petitioner will not be able to lead evidence, that apprehension is misplaced. Even in the draft additional issues, which will now be considered under the Issue no.3, the burden is cast on the Respondent to prove the breaches.

8. It is also made clear that since the learned Small Causes Court Judge has taken a view that all the proposed additional issues are covered under Issue No.3, the learned Judge will ensure that no prejudice is caused to either of the parties because of adopting this course of action, as regards leading of evidence and in other manner. In view of this clarification, the apprehension expressed by Mr.Setalwad does not survive.

9. There is thus no merit in this petition. The petition is rejected.

(N.M.Jamdar J.)