

Sequeira

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

WRIT PETITION NO. 2563 OF 2015.

Mr.Santosh Kumar Tiwari.

.. Petitioner

Vs.

The Phoenix Mills Ltd. & anr.

.. Respondents

Mr.Pradeep Gole, for the Petitioner.

None for Respondents.

***CORAM: N.M.Jamdar, J.
Wednesday 15 April, 2015***

PC :

Not on Board. Taken on board by way of praecipe filed by the Petitioner.

2 By this petition, the Petitioner-tenant challenges the order passed by the learned Judge, Small Causes Court, rejecting the application for amendment of the Written Statement filed by the Petitioner.

3 L.E.Suit bearing No.31/35 of 2011 is filed by the Respondents seeking eviction of the Petitioner. In the said suit, the Petitioner filed the Written statement in March 2012. Thereafter the Petitioner filed application for amendment of the Written statement in the year 2014. In the application the Petitioner stated that the Written statement was filed hurriedly and averments were

incorrectly made.

4 The application was opposed by the Respondents stating that the trial has already commenced and it is part heard, the suit is expedited and at this stage, the amendment was only to delay the trial. The learned Judge, Small Causes Court came to the conclusion that the Petitioner was attempting to withdraw certain admissions and no explanation was given as to why the amendment was sought at a belated stage. Accordingly, by the impugned order dated 17 January 2015, the application was rejected.

5 The learned counsel for the applicant submitted that the Applicant is not withdrawing the admissions but is only accepting what is stated by the Plaintiff in the plaint as correct. The finding is that the Petitioner is trying to withdraw the admissions. If the learned counsel for the Petitioner is correct, then the Petitioner can always take this position at the time of final argument of the suit and for that purpose amendment is not necessary. If the Petitioner is trying to withdraw the admissions, then the learned Judge was right in not allowing the amendment, that too at a belated stage.

6 In either view of the matter, the petition cannot be entertained, and is rejected.

(N.M.Jamdar, J.)