

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6561 OF 2014**

Darryl Bosco Pereira & Ors.

..Petitioners

Vs.

Vasantlal K. Rajbhar

..Respondent

Ms Eventa A. Gonsalves for the Petitioners

Mr. R. R. Sharma for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 23rd NOVEMBER, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 14-2-2014 passed by the Appellate Bench of the Small Causes Court, Mumbai by which order the Revision Application No.27 of 2012 filed by the Petitioners herein came to be dismissed on the ground that the Revision Application is not maintainable and resultantly the order dated 30-1-2012 passed by the Trial Court i.e. the Learned Judge of the Small Causes Court, Mumbai, allowing the application for amendment Exhibit 75 came to be confirmed.

2 The Petitioners herein are the original Plaintiffs, whereas the Respondent herein is the original Defendant. The Suit in question being R.A.E. Suit No.1001 of 1984 has been filed for eviction of the Defendant and for a

direction that he be directed to hand over quiet, vacant and peaceful possession of the shop premises bearing Shop No.124-A situate at Pali Naka, Dr. Ambedkar Road, Bandra (West) Bombay 400 050. In the said Suit, the Defendant i.e. the Respondent herein filed his Written Statement and has averred in paragraph 12(a) to the following effect. The relevant excerpt of the said paragraph is as follows:

“The defendants state that the Defendant No.3 was the tenant of the shop known as coal shop bearing shop No.53A Pali Naka, Dr. Ambedkar Road, Bandra Bombay 400 050, alongwith an open space admeasuring about 10 x 10 behind the said shop at the south-west corner of the house known as 124, Pali Naka, Dr. Ambedkar Road, Bandra Bombay 400 050, and the same were rented out to the Defendant No.3 by the father of the Plaintiff Nos.1 and 3 and husband of the Plaintiff No.2 in or about the year 1955 or thereabout on the payment of Rs.5 per month as rent.”

3 It seems that the construction allegedly carried out in front of the shop premises was demolished by the Municipal Corporation of Greater Mumbai on account of which the Defendant filed an application Exhibit 40 for amendment of the Written Statement as also for an injunction by way of a mandatory order to carry out repairs etc., to the premises in question. It seems that the Defendant was issued notices under the Maharashtra Regional Town Planning Act, 1966, alleging unauthorised construction being carried out by him pursuant to which notices the Defendant has filed his own Suit challenging the said notices. It appears that in the said Suit, the Plaintiffs herein who are

the Defendants in the said Suit after filing their Written Statement filed an additional Written Statement wherein they referred to certain antecedent facts of the year 1962 in the matter of the Municipal Corporation issuing notices to the father of the Defendants and also annexed the said notices to their additional Written Statement. The application Exhibit 40 filed by the Defendant i.e. the Respondent herein for amendment of the Written Statement and for injunction pursuant to the said amendment came to be rejected by the Trial Court by order dated 19-9-2008. The said application was rejected on the ground that since the demolition was carried out in respect of the portion which was in front of the suit shop, the said demolition cannot be the subject matter of the Suit as the suit premises described in the Suit were according to the Defendant admeasuring 48 sq.ft. with about 10 sq.ft. x 10 sq.ft. open space behind the shop. It seems that the said order was not carried higher by the Defendant.

4 As indicated above in the Suit filed by the Defendant in the City Civil Court, the Plaintiffs in the present Suit who are the Defendants in the said Suit filed their additional Written Statement wherein as indicated above antecedent facts relating to the year 1962 were adverted to as also the notices which were issued by the Municipal Corporation in the year 1962. Relying upon the said documents annexed to the additional Written Statement the Defendant in the instant Suit filed the application Exhibit 75 for amendment of

the Written Statement so as to incorporate the amendments which are mentioned in the schedule to the application Exhibit 75. The amendment sought was in description of the suit premises by placing reliance on the dimensions mentioned in the documents which were annexed to the additional Written Statement of the Plaintiffs in the Suit filed by the Defendant in the City Civil Court as also to incorporate subsequent event of the Municipal Corporation demolishing the premises.

4 The said application was opposed to on behalf of the Plaintiffs on the ground that the earlier application Exhibit 40 was rejected and that the Defendant by placing reliance on the additional Written Statement is seeking to now incorporate amendments which have been earlier rejected by the Trial Court by order dated 19-9-2008. The Trial Court considered the said application and has by the impugned order dated 30-1-2012 allowed the application. The gist of the reasoning of the Trial Court was that the earlier application Exhibit 40 was filed on the basis of different facts, the Trial Court was of the view that the merits of the amendment need not be gone into at the stage of consideration of the application for amendment and that the amendment is necessary for adjudication of the controversy between the parties. The said order dated 30-1-2012 was carried by way of a Revision by the Plaintiffs by filing Revision Application No. 27 of 2012 before the Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes

Court has rejected the Revision Application on the ground of maintainability of the Revision Application as also on the merits. In so far as the maintainability is concerned, the Appellate Bench of the Small Causes Court was of the view that since the order allowing the amendment application does not prejudice the Plaintiffs, the same is not revisable and therefore rejected the Revision Application on the said ground. However, the Appellate Bench of the Small Causes Court also held that the order passed by the Trial Court allowing the application for amendment cannot be found fault with. As indicated above, it is the said order dated 14-2-2014 which has taken exception to by way of the above Petition.

5 The principal contention of the Learned Counsel for the Petitioner Ms Gonsalves is that the Trial Court has erred in allowing the application for amendment which has the result of an admission relating to the dimensions of the suit premises being withdrawn.

6 Per contra Mr. Sharma the Learned Counsel for the Respondent i.e. the original Defendant sought to justify the impugned order having regard to the fact that the amendment was sought on the basis of the documents on which the additional Written Statement was filed by the Plaintiffs in the suit filed by the Defendant in the City Civil Court.

7 Having heard the Learned Counsel for the parties, in my view, there is no merit in the challenge raised in the above Petition. In so far as the amendment to the Written Statement is concerned, it is required to be borne in mind that consideration for the same stands on a different footing than the amendment to the Plaint. One of the consideration that ought to weigh with the court is the fact that the amendment sought does not result in withdrawal of an admission by the Defendant. In the instant case, though in the Written Statement as originally filed the Defendant has given the dimensions of the suit premises as 60 sq.ft. with about 10 sq.ft. x 10 sq.ft. open space at the back, it is on account of the documents which have come on record by way of the additional Written Statement filed by the Plaintiffs in the Suit which is pending in the City Civil court that the cause for moving the amendment application arose. The Defendant has stated so in the said terms in paragraph 3 of the application. In my view, the Trial Court as well as the Appellate Bench of the Small Causes Court were right in coming to a conclusion that the said amendment was required to be allowed so that there could be an effectual adjudication of the dispute between the parties. Though the Appellate Bench of the Small Causes Court has also held that the revision is not maintainable, this court need not go into the said aspect having come to the conclusion that the Trial Court was right in allowing the application Exhibit 75 filed for amendment of the Written Statement. In that view of the matter, no case for interference is made out, the Writ Petition is accordingly dismissed.

8 Needless to state that the Plaintiffs would be entitled to lead evidence in rebuttal to the case now sought to be set up by the Defendant by way of amendment in the Written Statement.

[R.M.SAVANT, J]