

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4575 OF 2014
WITH
WRIT PETITION NO.4576 OF 2014

M/s. Supekar Saree Centre,]
Through Partner Namdev Eknath Supekar]
(Deceased) Through heirs.] ... Petitioners

Versus

Smt. Shakuntala Narayan Gavande and Ors.] ... Respondents

Mr. Milind Sathaye for Petitioners.
Mr. Amit Gharte i/b Mr. J. D. Khairnar for Respondent Nos.1 and 2.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 26, 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. Writ Petition No.4575 of 2014 challenges the order dated 13/03/2014 made below Exh.41, by which the Appeal Court, has declined the Petitioners leave to amend the Written Statement during the pendency of the proceedings before the Appeal Court. In Writ

Petition No.4576 of 2014, the challenge is to the order dated 13/03/2014 below Exh.43 by which the Appeal Court has rejected the Petitioners' application under Order 4 Rule 27 of the CPC.

4. Insofar as the order below Exh.41 is concerned, there is really no jurisdictional error in the making of the same. By means of amendment, the Petitioners desired to place on record the alleged circumstance that the landlords are residing in Pune and the landlord's (Respondent No.1's) son is serving in Cinieron Company since last 7 years and is drawing a salary of Rs.1,00,000/- per month. On the basis of this amendment, the Petitioners seek to contend that the alleged need of the landlords has now come to an end.

5. In this case, the Trial Court, has made the eviction decree on the grounds on reasonable and *bona fide* requirement. In the Written Statement filed by the Petitioners, there is a denial that the need of the landlords is neither reasonable nor *bona fide*. In fact, in the application by which the Petitioners seek leave to amend the Written Statement at the appeal stage, the Petitioners have themselves made a statement that the amendment will not change in any manner the nature of the defences raised in the Written Statement. Accordingly, there is absolutely no necessity to permit amendment of the Written Statement at the appeal stage.

6. However, insofar as the order dated 13/03/2014 below Exh.43 is concerned, the same will have to be set aside. The Appeal Court, in the impugned order, has observed that its role is only

restricted to analyze the evidence existing in the suit and find out if there is any error in the Judgment passed by the Trial Court. This is obviously incorrect, particularly in matters relating to eviction on the grounds of reasonable and *bona fide* requirement. In a given case, cautious cognizance can always be taken of subsequent events, particularly where a party is in a position to establish that the subsequent events have completely eclipsed the need for obtaining the recovery of the suit premises. This Court has not examined the matter on merits and therefore it may not be understood as this Court having expressed any opinion on the merits of the matter. However, the reasoning of the Appeal Court that its role is limited to only analyzing the evidence existing in the suit with a view to finding out whether there is any error in the Judgment passed by the Trial Court, is not correct.

7. That apart, the Hon'ble Apex Court, in the case of ***Union of India Versus Ibrahim Uddin and Another***¹, has held that an application under Order 41 Rule 27 CPC is to be considered at the time of hearing of the appeal on merits so as to find out whether the document and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. In para 49, the Hon'ble Apex Court has observed thus :-

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the

¹ (2012) 8 Supreme Court Cases 148

evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh² and Natha Singh and Ors. v. The Financial Commr., Taxation³.)

8. In the present case, the Appeal Court, has dismissed the Petitioners' application under Order 41 Rule 27 of the CPC at a stage much prior to the hearing of the appeal on merits. This is again an error which warrants interference.

9. For the aforesaid reasons, the Rule is discharged insofar as Writ Petition No.4575 of 2014 is concerned, but Rule is made absolute

² AIR 1951 SC 193

³ (1976) 3 SCC 28 : AIR 1976 SC 1053

in Writ Petition No.4576 of 2014 to the extent that the impugned order dated 13/03/2014 below Exh.43 is set aside. The Appeal Court is directed to consider in accordance with law and on its own merits the Petitioners' application under Order 41 Rule 27 of the CPC at the time of hearing of the appeal on merits so as to find out whether the document and/or the evidence sought to be adduced by the Petitioners have any relevance/bearing on the issues involved.

10. Further, considering that the appeal is of the year 2006, the Appeal Court is directed to dispose of the same as expeditiously as possible and in any case, within a period of one year from the date of production of authenticated copy of this order.

11. The parties to appear before the Appeal Court on 14/09/2015 and produce authenticated copy of this order.

12. The two Writ Petitioners are disposed of in the aforesaid terms.

(M. S. SONAK, J.)