

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 5711 OF 2015

Bhupendra Gordandas Mody .. Petitioner  
vs.  
Kirit Ramdas Kapadia and ors. .. Respondents

Mr. Gautam Ankhad, Priti Patel, N. Mohanty i/b Shukla & Associates  
for the Petitioner.  
Ms E.A. Gonsalves for the Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE : 29 JUNE 2015.**

**P.C. :-**

1] This petition challenges the order dated 21 January 2015, by which the Small Causes Court at Mumbai has declined leave to the petitioner to amend his written statement, including *inter alia* by way of introducing certain documents referred to in the application seeking leave/draft amendment.

2] In this case, the original written statement came to be filed by the petitioner on 16 June 2010 and thereafter, with the leave of the Court, the petitioner filed his additional written statement 24 April 2013. The plaintiffs have filed affidavit in lieu of examination in chief on 30 September 2013. The cross-examination is yet to commence. Technically, therefore, the trial in the suit has already commenced.

3] The application seeking leave to amend the written statement was filed on 13 June 2014. The same has been dismissed by the impugned order dated 21 January 2015, mainly on the ground that the petitioner has not been able to make out a case that despite due diligence such amendment could not have been applied earlier and further that the amendment seeks to introduce the events after filing of the suit, which are by no means relevant for adjudication of the controversy raised in the suit. The suit has been instituted on the ground that there was non-user of the suit premises, without any reasonable cause for six months immediately preceding date of the filing of the suit.

4] The learned counsel for the petitioner has submitted that in the written statement as originally filed, the petitioner has already pleaded that this suit was a counterblast to the complaints made by the petitioner with regard to alleged failure on the part of the respondents in carrying out repairs to the suit premises. The amendment, mainly seeks to elaborate upon this aspect and further make reference to correspondence between the petitioner and the MHADA authorities in the aforesaid regard. The learned counsel for the petitioner submits that no prejudice will occasion to the

respondents and in any case, the prejudice if any, is compensable in costs. The learned counsel for the petitioner, upon instructions from the petitioner, who is present in the Court, submitted that the petitioner volunteers to pay costs of Rs.30,000/- and further, cooperate in the expeditious disposal of the suit.

5] Ms Gonsalves, learned counsel for the respondents, submitted that the proposed amendment is not at all relevant for deciding the issue raised in the suit, particularly considering that the circumstance the suit is based upon the cause of action that there was non-user of the suit premises without any reasonable cause for six months immediately preceding the date of filing the suit. In such circumstances, Ms Gonsalves submitted that the correspondence which is subsequent to the institution of the suit is totally irrelevant and the amendment application is nothing but a ploy to delay the further proceeding in the suit.

6] Having considered the submissions made by the learned counsel for the parties and perused the record, though it is true that trial has technically commenced, with the peculiar facts and circumstances of the present case, the proposed amendment can be

allowed. The proposed amendment does not introduce a completely new case. The foundation, with regard to the proceedings being in the nature of a counterblast are already contained in the original written statement. The amendment seeks to elaborate upon this aspect. The issue of relevance, though not completely irrelevant need not be gone into in greater details at this stage. Ms Gonsalves is right in her submission that the suit as instituted, is to mainly succeed or fail on the basis of establishment of jurisdictional facts with regard to non-user for six months and the reasonable cause, if any, therefor. Nevertheless, at this stage, it cannot be said with certainty that the proposed amendment or the documents which the petitioner seek to produce by way of the proposed amendment are totally irrelevant.

7] Nevertheless, it is clear that the petitioner should have acted with greater diligence, particularly since most of the documents which the petitioner seeks to produce are letters addressed by the petitioner to several parties. There are, however, some documents emanating from the authorities themselves. Upon cumulative consideration, therefore, the amendment can be allowed, subject to the petitioner paying costs of Rs.30,000/- (Rs. Thirty Thousand) to

respondent No.1, who is stated to be Constituted Attorney for the remaining respondents. Further the Small Causes Court is directed to dispose of the R.A.E. Suit No.216/415 of 2008 as expeditiously as possible and in any case within a period of one year from today.

8] The learned counsel for the respondents has stated that besides the witness who has already filed affidavit in lieu of examination-in-chief, there is no proposal to examine any further witnesses. Learned counsel for the petitioner herein upon taking instructions from the petitioner has also made a statement that the petitioner will examine in all two witnesses, including himself. These statements are recorded and accepted.

9] Accordingly, this petition is disposed of with the following order :

(a) Rule is made absolute in terms of prayer clause (a).

Necessary amendment to be carried out within two weeks from today;

(b) The aforesaid is subject to deposit of costs of Rs.30,000/- (Rs. Thirty Thousand only) by the petitioner, within a period of two weeks from today, before the Trial

Court. Such costs, can thereafter be withdrawn by respondent No.1 in his capacity as Constituted Attorney for other respondents as well;

(c) Considering that the amendment is being allowed, respondent No.1 is at liberty to file additional affidavit in evidence, within a period of two weeks from the date of amendment is carried out to the written statement;

(d) The statements made by the parties through their learned counsels with regard to number of witnesses proposed to be examined are accepted;

(e) The Trial Court to decide R.A.E. Suit No. 216/415 of 2008 as expeditiously as possible and in any case within a period of one year from today.

(f) All parties to cooperate with the Trial Court in the matter of expeditious disposal of the aforesaid suit.

11] This petition is disposed of in the aforesaid terms.

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