

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6296 OF 2015

Smt. Pramila Vithaldas Ved & Ors.	..	Petitioners
VS.		
Mr. Erach Boman Khavar (Irani)	..	Respondent

Mr. Deepak Lulia for Petitioners.
Mr. Sandeep A. Bhagwat for Respondent.

CORAM : M. S. SONAK, J.
DATE : 16 JULY 2015

P.C. :-

- 1] **Not on board, upon production, taken on record.**
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] This petition challenges order dated 7 April 2015, by which the petitioners application for amendment of the written statement has been rejected. The rejection is on the ground that the plaintiff has filed affidavit of evidence and therefore, proviso to Order 6 Rule 17 of the CPC is attracted.
- 4] In the present case, it is true that the petitioners could have been more diligent in applying for amendment. Further, the

premises in the present case are located at Breach Candy and the petitioners, who are three ladies, who have been carrying on business therefrom since the year 1970. The case set out by the petitioners is that the amendment only seek to elaborate upon the defences already raised and it is on account of communication gap between them and their Advocate that the details which are now sought to be supplied by the application seeking leave to amend remained to be set out in the written statement. It is to be noted that the plaintiff has merely submitted affidavit in evidence and even the documents are yet to be marked and the cross-examination is yet to begin.

5] In the aforesaid circumstances, subject to payment of substantial costs, leave to amend can be granted. In view of the peculiar facts and circumstances, the petitioners need not be relegated to the remedy of revision.

6] Accordingly, this petition is allowed. The impugned order dated 7 April 2015 is set aside The petitioners application seeking leave to amend at Exhibit 15 is also allowed. Necessary amendment to be carried out within two weeks from today. In view of the leave which is now granted, the plaintiff is at liberty to file additional affidavit in lieu of examination-in-chief as also additional

documents. All this is subject to the petitioners depositing before the Small Causes Court costs of Rs.25,000/- (Rupees Twenty Five Thousand) within a period of two weeks from today. In case the costs are deposited, the respondent landlord is at liberty to withdraw the same unconditionally. In case there is default in payment of costs, then this petition shall be deemed to have been dismissed.

7] Rule is made absolute to the aforesaid extent. There shall be no order as to costs in this petition.

8] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka