

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5710 OF 2015

Smt. Bhanumatiben Bhawanji Savla,]
through her C.A. Shri Mahesh Bhawanji Savla.] ... Petitioner

Versus

Minoo Anklesharia and Ors.] ... Respondents

Mrs. Pooja Khandeparkar a/w Navdeep Vora & Ms. Namita Mestry i/b
Navdeep Vora Associates for Petitioner.

Mr. Surel Shah a/w Ms. K. R. Daviervalva i/b Mulla & Mulla for
Respondent Nos.1, 3, 4 and 5.

CORAM :- M. S. SONAK, J.

DATE :- JULY 15, 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. This petition challenges common order below Exh.31 and Exh.35 made on 02/05/2015, in effect, declining the Petitioner leave to amend the appeal memo as well as leave to amend the written statement at the appellate stage.

4. The application at Exh.31 applied for leave to amend the memo of appeal as per the schedule annexed to the application. The schedule reads thus :-

- “I. Add as grounds L (a) Memo of Appeal as under;
L (a) The Ld. Trial Judge ought to have taken into consideration the admission made by the previous landlords Mrs. K. T. Mistry in paragraph 3 of the written statement filed on 18th December 1980 in R.A.D. Suit No.4222 of 1978 by the Appellant against the previous landlords Mrs. K. T. Mistry and present Respondent which is pending before C.R.No.21;*
- II. Add as Para L (b) under;
L (b) The Ld. Trial Judge ought to have held that Appellant is occupying the suit premises as licensee under the agreement dated 15/1/1973 and licence granted in favour of Appellant was valid and subsisting on 1st February 1973 and ought to have been held that Appellant is protected licensee/deemed tenant and as such entitled to the protection under the provisions of the Bombay Rent Control Act,*
- III. Add as Para L (c) as under;
L (c) The Ld. Trial Judge erred in holding that Appellant failed to prove that she is protected tenant of Respondents in respect of suit premises*

and erred in answering the additional issue no.4(c) in negative;”

5. Perusal of the aforesaid, indicates that the Petitioner seeks to raise certain additional grounds in the appeal memo in the context of documents already on record. There is no reason, except perhaps the delay and the conduct of the Petitioner, to deny such leave. The Appeal Court, in making the impugned order, has basically adverted to the aspect of delay in seeking leave to amend and the consequent conduct of the Petitioner of prolonging the hearing in the appeal. Although, it is true that the application for amendment has been made in the year 2015, when the appeal was lodged in the year 2009, the same, by itself, is no reason to decline leave. For the delay involved, the Petitioner shall have to pay substantial costs. This is because according to the Petitioner, the grounds which they propose by way of amendment are vital, to their case. The Petitioner has volunteered to pay costs of Rs.1,25,000/-. The Appeal Court, whilst making the impugned order, had dismissed the application seeking leave to amend by imposing costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) upon the Petitioner. The interest of justice would be met if the Petitioner is permitted to urge additional grounds in respect of her appeal. The grant of such leave, does not involve leading of any further evidence or for that matter, any occasion for remand. The grounds relate to the record before the Trial Court and are raised in the context of documents already on record before the Trial Court. Accordingly, subject to payment of costs of Rs.1,25,000/-, the amendment to the appeal memo can always be allowed.

6. Insofar as the application at Exh.35 is concerned, the Petitioner has made the following substantive prayers :-

- “(a) *this Hon'ble Court be pleased to permit me to amend the written statement as per schedule annexed to this application and lead evidences and produce the documentary evidences viz. the certified copies of written statement and reply filed by Mrs. Lilian Stevan in RAD Suit No.4708 of 1975 and written statement filed by Mrs. K. T. Mistry in R.A.D. Suit No.4222 of 1978;*
- (b) *The Appellant be permitted to serve the copy of this application upon the Respondent No.6 (a) by RPAD at the address mentioned in the title of the Memo of Appeal;”*

7. Mrs. Pooja Khandeparkar, learned Counsel for Petitioner, on basis of instructions from the Petitioner, has stated that the relief insofar as production of written statement of Mrs. K. P. Mistry in R.A.D. Suit No.4222 of 1978 is not being pressed, since such written statement is already part of the record before the Trial Court and there is no necessity for any further amendment or evidence in that regard. Insofar as the written statement of Mrs. Lilian Stevan in RAD Suit No.4708 of 1975 is concerned, Ms. Khandeparkar submits that such written statement is again vital to the case of the Petitioner. Ms.Khandeparkar pointed out the circumstances in which the said written statement could not be produced before the Trial Court and

such circumstances are set out in para 7 of the application at Exh.35, which reads thus :

“7. I say that the copies of these said proceedings were kept in the wooden cupboard which got affected by leakage of rain water and ultimately kept in plastic bag which was kept in my office cupboard. I say that because of leakage of water, I had to remove all my important documents including the copies of the proceedings in my office cupboard. I say that due to tension and pressures, I could not remember about the existences of the said copies of proceeding in R.A.D. Suit No.4078 of 1975 and copy of Written Statement by Mrs.K.T.Mistry filed in R.A.D. Suit No.4222 of 1978 and therefore I could not brought it this facts to the notice of my previous Advocate.”

8. The Appeal Court, has rightly rejected the application seeking leave to amend the written statement and produce documentary evidence in the form of written statement and reply filed by Mrs. Lilian Stevan in RAD Suit No.4708 of 1975. The Appeal Court, in the impugned order, as stated, and in my Judgment, rightly, that the reason set out in para 7 as aforesaid, hardly inspires any confidence. Besides, there is no explanation as to how the circumstances arising out of tension and pressure dissolved once the appeal came up for final hearing. The appeal is of the year 2009 and the present application has been moved only in the year 2015. The

application, if considered, would perhaps involve substantial delay in the disposal of the appeal. If the application is allowed, from the tenor thereof, it does appear that the Petitioner will seek a remand before the Trial Court. Already, application seeks leave to not only amend the written statement, but further to lead evidence and produce documentary evidence. Any amendment to the written statement at this stage, would also necessitate grant of further liberty to the Plaintiff-Respondent to meet the case set out by the amendment. The Appeal Court has therefore rightly declined leave insofar as the application at Exh.35 is concerned. The Petitioner, has demonstrated no diligence. The relevancy of purported amendment is not at all clear. The amendment, if granted, would occasion prejudice to the Respondent, which would not be compensable in terms of costs. Accordingly, there is no reason to interfere with the impugned order, insofar as it concerns application at Exh.35.

9. The complaint of Mr. Surel Shah learned Counsel for Respondent Nos.1, 3, 4 and 5, that the Petitioner is delaying the final disposal of Appeal No.584 of 2009 can be redressed, by issuing direction for expeditious disposal of the Appeal.

10. Accordingly, this petition is disposed of with the following order :-

- (a) Rule is made partly absolute.
- (b) The impugned order dated 02/05/2015 is set aside insofar as it concerns the application at Exh.31. Leave to amend the appeal memo is granted. Necessary amendment to be

carried out within two weeks from today. Before carrying out the amendment, the Petitioner to pay costs of Rs.1,25,000/- (Rupees One Lac Twenty Five Thousand Only) to the Respondent No.1 who shall receive the same on behalf of himself and Respondent Nos.3, 4 and 5. The payment of costs is a condition precedent.

- (c) The impugned order dated 02/05/2015, insofar as it concerns the application at Exh.35, is not interfered with. However, the order to pay the costs is set aside since the Petitioner has offered to pay costs of Rs.1,25,000/- within two weeks, in the context of application at Exh.31.
- (d) The Appeal Court to dispose of Appeal No.584 of 2009 as expeditiously as possible and in any case, not later than 31/08/2015.
- (e) All parties to cooperate in the matter of expeditious disposal of the Appeal.
- (f) It is clarified that the leave to amend will not imply that the contents thereof have been admitted by the Respondents. In fact, all the parties shall be entitled to raise all available contentions with regard to the additional ground/s in respect of which leave has been granted.
- (g) All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)