

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 6008 OF 2014.

Vilas Vasant Bhanushali (since deceased)

1(a) Smt.Pratibha Vilas Bhanushali & ors. .. Petitioners

Vs.

Shrirang Vitthal Kadam. .. Respondent

Mr.Rajendra Yadav, for Petitioners.

Mr.Rajendra Satale i/b Mr.P.R.Kadam, for Respondent.

***CORAM: N.M.Jamdar, J.
Monday 6 April, 2015***

Oral Order :

By this petition, the Petitioners challenge the order dated 12 June 2014 passed by the learned Judge, Small Causes Court, Mumbai, rejecting the application for amendment of the plaint filed by the Petitioners.

2 The Petitioners filed a R.A.E. Suit bearing No.148/258 of 2005 against the Respondent for eviction. It is the case of the Petitioners, as pleaded in the plaint, that the Petitioners require premises for their bonafide and reasonable requirement. It is also pleaded that the Petitioners are in requirement of additional shop premises. It is pleaded that the Respondent has never carried business in the suit premises and has not been in occupation for several years and has sublet the same. The Written Statement is

filed by the Respondent in which the contentions are denied. It is stated that the Respondent has three sons. The elder one being handicapped whose livelihood is taken care by setting up STD/PCO booth in the suit premises. The Written statement was filed on 29 March 2005.

3 When the suit came to the stage of evidence and cross-examination of the Respondent was over, the Petitioners filed an application for amendment of the plaint on 30 April 2014, which has been rejected by the impugned order on the ground that, it was moved at a belated stage and that the Petitioners are trying to introduce new ground of eviction, namely subletting.

4 The reasons for moving application at a belated stage, as stated by the learned counsel for the Petitioners, is that the Respondent has given certain admissions in the cross-examination as regards the PCO booth and other additional premises available to the Respondent. He submitted that in view of the same the amendment to the plaint was necessary. That the amendment was moved at a belated stage, is not disputed and therefore, for want of adequate explanation for delay, the impugned order passed by the learned Judge, Small Causes Court, cannot be faulted with.

5 It appears from the pleadings in the plaint that the Petitioners have mentioned that the Respondent has sublet the premises. If during the cross-examination the Respondent has made certain

admissions as alleged then the Petitioners can always rely upon the same at the time of arguments. It is open for the Petitioners to rely upon the alleged admissions as regards the PCO booth being run by the son and acquisition of the alternate premises and for that purpose an amendment to the plaint, is not necessary, as the ground is already pleaded in the plaint. In view of this clarification no prejudice is caused to the Petitioners by the impugned order, therefore no further orders are required to be passed. All contentions of both the parties are kept open. The Writ petition is accordingly disposed of.

(N.M.Jamdar, J.)