

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7288 OF 2014

Shri Prakash Krishnaji Bedre	]	
(Through his Constituted Attorney	]	
Smt. Shaila Prakash Bedre.)	]	... Petitioner

Versus

Shri Vincent @ Wilson Juren D'Silva.	]	... Respondent
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Mr. Akshay Bobade i/b Mr. Rajiv Jadhav for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- SEPTEMBER 03, 2015

P. C. :-

1. This petition challenges the order dated 07/03/2014, by which the Appeal Court has declined the Petitioner leave to amend the written statement at the appellate stage.

2. The Petitioner has suffered a decree of eviction on the ground of continuous non-user of the suit premises for a period in excess of six months without there being any reasonable cause for such non-user. In the written statement filed before the Trial Court, the Petitioner had taken a defence that the ground of non-user was false and that the suit premises were indeed being used. In appeal, the Petitioner seeks to now explain the circumstances which led to

alleged non-user of the suit premises. Obviously, such circumstances were allegedly present and known to the Petitioner, when the original written statement was filed. The Appeal Court has rightly declined leave to amend. The Appeal Court has rightly referred to the proviso to Order 6 Rule 17 of the CPC, in the context of absence of any diligence being demonstrated by the Petitioner. There is no jurisdictional error in the making of the impugned order. This petition is accordingly dismissed.

3. However, it is clarified that the observations made in the impugned order, or for that matter in the present order, are only in the context of considering the Petitioner's plea for leave to amend. Accordingly, the Appeal Court need not be influenced by such observations at the stage of deciding the Petitioner's appeal in accordance with law and on its own merits.

4. With the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.