

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8419 OF 2014

Gopaldas S. Ashar & Ors. .. Petitioners
vs.
Mochi A. Madhu & Ors. .. Respondents

Mr. Deepak Lulia for Petitioners.
Mr. Vijay Sutrale for Respondents.

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

P.C. :-

1] Rule. With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 7 July 2014 made by the Small Causes Court rejecting the petitioners application at Exhibit 96.

3] In Exhibit 96, the petitioners had sought for the following reliefs:

a) The Plaintiffs be allowed to join the Respondent as party Plaintiff No.3 in the present suit;

b) The Plaintiffs be allowed to delete the name of the Defendant No. 1 from the Plaint;

c) The Plaintiffs be allow to carry out the amendment to the Plaint as per the schedule annexed herewith;

d) The Plaintiffs be granted liberty to file the evidence of the Plaintiff No. 3 in the present Suit;

e) Cost of the Application be provided to the Plaintiffs;

f) This Hon'ble Court may grant such other and further reliefs as the circumstances of the case may demand.

4] In so far as the relief in terms of prayer clause (b) is concerned, the same has to be granted. The learned counsel for the respondents, in fact, has no objection to the same being granted. Accordingly, the same is hereby granted. Such deletion be effected within two weeks from today.

5] In so far as the remaining reliefs are concerned, the trial Court, has rejected the same by applying the proviso to Order 6 Rule 17 of the CPC, since in the meantime, the trial has commenced.

6] In my judgment, based upon the proviso to Order 6 Rule 17, reliefs in terms of prayer clauses (a) and (d) could not have been rejected. Accordingly, it is necessary that the learned trial Court, reconsiders the application at Exhibit 96 in so far as prayer clauses (a) and (d) are concerned.

7] In so far as prayer clause (c) is concerned, it is to be noted that there is hardly any discussion on the issue of due diligence on

the part of the petitioner. Besides, in Rent Act matters, it is settled position in law, that subsequent events may be permitted to be taken into consideration. Accordingly, it was incumbent upon the trial Court to consider the application for leave to amend in the light of peculiar position which arises under the Rent Act. Rather than, this Court, go into the issue, it would be appropriate therefore, if matter is remanded to the trial Court for reconsideration of application (Exhibit 96), including *inter alia*, in the context of prayer clause (c). It is directed accordingly.

8] It is clarified that this Court has not expressed any opinion on the merits of the application at Exhibit 96 and accordingly all contentions of all parties in this regard are kept open for fresh decision by the learned trial Court.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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

(M. S. SONAK, J.)