

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

WRIT PETITION NO. 9126 OF 2014

Nimmie Sunil Patel & ors. ... Petitioners
v/s
Bharat Purushotumroy Matchhar & ors. ... Respondents

Mr.Chandrakant Chavan for the petitioners.
Ms.S.P. Trivedi i/by A. Bharat & Co. for the respondents.

CORAM: N. M. JAMDAR, J.

DATED : 21ST APRIL, 2015

P.C.:

Heard learned counsel for the parties.

2 By this writ petition, the petitioners/defendants challenge the order passed by the Small Causes Court, Mumbai, dated 9 May 2014, allowing the application for amendment filed by the respondents/plaintiffs.

3 R.A.E. Suit No.226/334 of 2010 is filed by the respondents against the petitioners for eviction. In this suit, the respondents filed an application for amendment of the plaint. The respondents have sought to insert the averments as under :

“(I) In paragraph No.5 of the plaint, after the last sentence therein, the words “as such entitled to tenancy rights

under the provisions of Maharashtra Rent Control Act, 1999” to be added.

(II) In paragraph No.6, the last sentence has been mistakenly inserted, therefore, the same be permitted to be deleted.

(III) In paragraph No.7, the sentence beginning from the sixth i.e. “None of the defendants were residing with the deceased tenant at the time of his death and therefore none of the defendants are entitled to the tenancy rights as per Section 7(15) of the Maharashtra Rent Control Act, 1999” be permitted to be deleted.

(IV) In paragraph No.9, the averments about the non-user remained to be incorporated in the plaint. Therefore, as per Section 16(1)(n) of the Maharashtra Rent Act, 1999 the following words “the present defendants were not in use and occupation of the suit premises and the suit premises were lying vacant and unused. The defendants were not using the suit premises for the purpose for which it was let i.e. for residence for a continuous period of six months immediately preceding the date of filing of the above suit without reasonable cause” be permitted to be added in paragraph No.9 after the completion of the first sentence in the said paragraph.”

The learned Judge of the Small Causes Court, by the impugned order has permitted the amendments, except Clause (IV), by imposing cost of Rs.1000/-.

4 Learned counsel for the petitioners submitted that the amendment ought not to have been allowed after the commencement of the trial and the amendment granted will cause prejudice to the petitioners. Learned counsel for the petitioners

sought to rely on the decision of the Apex Court in the case of ***Chander Kanta Bansal v/s Rajinder Singh Anand***¹ to contend that amendment should not be allowed at a belated stage.

5 Though it is true that the amendment is moved after the commencement of the trial, but it is not that the moment the trial commences the Trial Court is powerless to grant the amendment even though cause is made out and the interest of justice so requires. In the case before the Apex Court, which is cited by the learned counsel for the petitioners, an amendment to the written statement was sought after 18 years and the defendant therein was trying to retract an admission. In the present case, the learned Judge has analyzed the proposed amendments and found them to be clarificatory in nature and has granted the same on imposition of costs. The one amendment i.e. seeking the decree as regard the non-user of the suit premises, was rejected.

6 Considering the above position, no case for interference under Article 227 is made out. There is neither any error of jurisdiction or any failure of justice.

7 The writ petition is accordingly rejected.

8 It will be open to the petitioner to contest the amended portion on merits.

(N. M. JAMDAR, J.)

1 2008(4) All MR 423.