

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7871 OF 2014

Shri. H.R. Rana and ors.

.. Petitioners

vs.

Princess Estate Supervising and anr.

.. Respondents

None for the Petitioners.

Mr. P.K. Dhakephalkar, Sr. Advocate and Mr. Jaydeep Deo for
Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 14 JULY 2015.

P.C. :-

1] None for the petitioners. However, Rule. With the consent of learned senior counsel appearing for respondent No.1, Rule is made returnable forthwith.

2] The order impugned in this petition declines the petitioners leave to amend the reply to Obstructionist Notice by way of raising certain additional grounds. The rejection is *interalia* on the ground that an Obstructionist Notice is not a pleading and therefore the provisions of Order 6, Rule 17 of the Code of Civil Procedure, 1908 (CPC) will not apply. Secondly, the impugned order holds that the grounds which are now sought to be raised, were not earlier raised.

3] Mr. P.K. Dhakephalkar, learned senior counsel for respondent No.1 submits that the pleas proposed to be raised by way of amendment are totally untenable and the entire objective of seeking leave to amend was to delay the proceedings. Learned senior counsel pointed out that the decrees have been granted by the competent

Courts and the same have attained the finality. In such circumstances, learned senior counsel submitted that there is no warrant to interfere with the impugned order.

4] Having perused the material on record, in my judgment, both the reasons, set out in the impugned order are untenable. There is no bar seeking amendment of reply to an Obstructionist Notice under the scheme of CPC. Secondly, the purpose of amendment was to raise additional grounds, obviously because such grounds were not earlier raised. The evidence in the matter is yet to commence. In such circumstances, there was no reason to disallow the amendment application.

5] However, there is eviction decree in respect of suit premises. The petitioners obstruct the execution of said decree. Accordingly, it would be appropriate if the proceedings in Obstructionist Notice are disposed of, as expeditiously as possible and in any case within a period of six months from the date of production of an authenticated copy of this order.

6] Accordingly, the impugned order dated 7 August 2014 is set aside. The petitioners' application for amendment at Exhibit-18 is granted. Necessary amendment to be carried out within a period of two weeks from the date of production of an authenticated copy of this order before the Trial Court. The Trial Court is directed to dispose of Obstructionist Notice No. 395 of 2011, as expeditiously as possible, and in any case within a period of six months from the date of production of the authenticated copy of this order.

7] Parties to appear before the Trial Court on 20 July 2015 in the morning session and produce an authenticated copy of this order.

8] The petitioners to, however, pay costs of Rs.7,500/- in favour of respondent No.1. Such costs to be deposited before the Trial Court on or before 7 August 2015. Costs once deposited, respondent No.1 herein is at liberty to withdraw the same unconditionally.

9] Rule is made absolute to the aforesaid extent.

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

(M. S. SONAK, J.)