

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9755 OF 2011

Sangam Trading Company .. Petitioners
VS.
Shri Farooq Abdul Rahim Patel & Ors. .. Respondents

Mr. Uday P. Warunjikar for Petitioners.
Mr. Vinod Sangvikar i/b. Mr. Umesh Mankapure for Respondents.

CORAM : M. S. SONAK, J.
DATE : 20 AUGUST 2015

P.C. :-

1] The learned counsel for the parties agree that this matter pertains to the assignment of this Bench.

2] The challenge in this petition is to the order dated 28 September 2011, by which the petitioners application at Exhibit '96'. seeking leave to amend the written statement has been rejected.

3] Heard the learned counsel for the parties and perused the record.

4] The impugned order, rejects the application for seeking leave to amend by holding that it is impermissible for a defendant to question the title of the landlord and further that even a single co-owner can file a suit seeking eviction of the tenant. That may be the position in law, however, at least *prima facie*, that is not a ground to

shut out the leave to amend, particularly since certain other matters were proposed to be introduced in the written statement.

5] However, the fundamental issue which arises in this case is whether leave to amend could have been granted after conclusion of evidence by both parties and the matter was posted for final arguments. There is no discussion on this aspect at all in the impugned judgment and order. The proviso to Order VI Rule 17 of the CPC provides that normally no application to seek amendment of the pleadings should be entertained once the trial is commenced, unless, the applicant establishes that despite due diligence such application could not have been taken out earlier. The proviso, which is applicable in the context of the present suit, was required to be considered by the Trial Court.

6] In these circumstances, the impugned order dated 28 September 2011 is set aside. The Trial Court is directed to reconsider the application at Exhibit '96' on its own merits and in accordance with law within a period of one month from the date of production of authenticated copy of this order. It is clarified that observations made by this Court are only *prima facie* and the Trial Court, in dealing with the application seeking amendment, need not be influenced by them.

7] Further considering that the suit is of the year 2003 and even the recording of evidence is concluded, the Trial Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

8] The parties to appear before the Trial Court on 7 September 2015 at 11.00 a.m. and produce authenticated copy of this order.

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

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

(M. S. SONAK, J.)

Chandka