

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 891 OF 2015

Mr. Jayantilal J. Kothari .. Petitioner
vs.
Mrs. Rehana Kureshi M. Khambati and anr. .. Respondents

Mr. Kantilal H. Kanojia for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 14 AUGUST 2015.

P.C. :-

1] By order dated 3 August 2015, notice was issued to the respondents making it clear that this matter will be disposed of finally at the stage of admission. The petitioner has filed an affidavit of service indicating that the service has been effected upon the respondents.

2] The challenge in this petition is to the order dated 11 November 2014, by which the Small Causes Court has not permitted the petitioner-plaintiff to implead Mr. Kureshi M. Khambati, the husband of the tenant as a party defendant in R.A.E. Suit No. 1158/1960 of 2009 and to carry out consequential amendment in that regard.

3] Although against the impugned order, a Revision Petition would be maintainable before the Division Bench of the Small Causes Court, looking at the nature of controversy involved, there is no necessity to relegate the petitioner to such alternate remedy.

4] The petitioner has instituted R.A.E. Suit No. 1158/1960 of 2009 seeking eviction of respondent No.1 from the suit premises. In the written statement, the respondent No.1 took up the defence that tenancy in question stands in joint names of the respondent No.1 and respondent No.2, who is her husband. In these circumstances, the petitioner has applied for impleadment of respondent No.2, as and by way of abundant caution. The leave to amend has been declined on the ground that the issues have already been framed on 14 February 2014 and the application seeking leave to amend was made some time in July 2014. The Small Causes Court has held that the petitioner should have been more diligent in the matter.

5] The impugned order is required to be set aside and leave to amend be granted to the petitioner. In the first place, although the issues were framed on 14 February 2014, the learned counsel for the petitioner states that till date affidavit in lieu of examination-in-chief has not been filed. Therefore, it cannot be said that the trial as such has commenced for the proviso to Order 6 Rule 17 to become applicable. Secondly, the amendment is necessary for full and effective adjudication of all issues which arise in the suit. Thirdly, by declining leave to amend, there is every possibility of multiplicity. Some marginal delay could always have been compensated by way of costs. Besides, it is to be noted that the petitioner in the present case is the landlord who seeks eviction of the respondents from the suit premises. Ordinarily, therefore, the petitioner would gain nothing by delaying such proceedings.

6] Upon cumulative consideration of all the aforesaid circumstances, the impugned order dated 11 November 2014 is set aside. The petitioner's application at Exhibit-14 is allowed and necessary amendment to be carried out within a period of two weeks from today. This shall, however, be subject to the petitioner depositing costs of Rs.2000/-, in the Small Causes Court, within a period of two weeks from today. Upon deposit of such costs, the respondent No.1 shall be at liberty to withdraw the same unconditionally.

7] The Writ Petition is disposed of in aforesaid terms.

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

(M. S. SONAK, J.)

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