

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 4455 OF 2015

M/S CHANDANMAL AND COMPANY, JALGAON
VERSUS
ASHOKRAI KUMUDCHANDRA LAIWALA AND ANOTHER

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Advocate for Petitioners : Mr. Dixit Satyajeet S
Advocate for Respondents 1 and 2: Mr. N. B. Patekar
h/for Mr. P. R. Katneshwarkar

CORAM : V. K. JADHAV, J.

DATE : 5th February, 2016

PER COURT :

1. The matter is heard finally at the admission stage by consent of the parties.

2. The petitioner is original applicant in Misc. Civil Application No.104/1981 filed for deciding the standard rent of the suit premises. During the pendency of the said application, the petitioner has filed application Exh. 32 for carrying out amendment in the application. The learned 2nd Joint Civil Judge, Junior Division, Bhusawal, by the impugned order dated 17.03.2015, rejected the said application. Hence this writ petition.

3. Learned counsel for the petitioner submits that on

21.04.2012 itself, the petitioner has filed two applications for amendment. The present application Exh. 32 is filed in Misc. Civil Application No. 104/1981 for carrying out amendment pertaining to the dispute about the furniture and fixtures. The another application at Exh.151 came to be filed in pending RCS No.263/1982, instituted by the present respondents for recovery of possession. The learned counsel submits that in both the applications, nature of the amendment as sought was the same. The learned Judge of the trial court has allowed application Exh. 151 and thereby permitted the present petitioner/original defendant in that suit to carry out amendment in the written statement. However, the application at Exh. 32 filed in Misc. Civil Application No. 104/1981 was kept pending and it was decided after two years.

4. The learned counsel submits that the proposed amendment does not change the nature of the pleadings and secondly, no prejudice is likely to be caused to the other side. The learned counsel submits that, since the application at Exh.151 is allowed by the trial court, there was no reason to reject the application at Exh. 32 in Misc. Rent Application No.104/1981.

5. The learned counsel for the respondents submits that in paras 2 & 3 of the Misc. Application No.104/1981, the petitioner/original applicant has already pleaded that the furniture and fixtures do not belong to the Popular Films Ltd., Bhusawal and since the applicant is running the theatre, all the furniture and fixtures belong to the applicant and at the time of auction, the same were specifically excluded from the sale. The learned counsel submits that in the light of that, the proposed amendment is unwarranted and uncalled for. The learned counsel submits that the trial court has rightly rejected the application and there is no substance in the writ petition.

6. It appears that same amendment is allowed by the learned trial court by an order passed below Exh.151 in RCS No.263/1982 which is instituted by the respondents/plaintiffs, in respect of the same property for recovery of possession. It is true that to some extent, there is pleadings in Misc. Rent Application No.104/1981 about furniture and fixtures. However, the details of disposal of the same in terms of compromise and other connected matters thereto are not mentioned in the application. In fact, the evidence is not required to be pleaded.

However, since the amendment is allowed in RCS No.263/1982, it would not cause any prejudice to the respondents herein, if the application Exh. 32 in Misc. Civil Application No.104/1981 is allowed. There was no reason for the trial court to keep the application Exh.32 pending for near about two years, when the amendment in the same form was allowed by passing order below Exh.151 in RCS No.263/1982 in the year 2013. Hence following order:

O R D E R

- i. The order dated 17.03.2015 passed below Exh. 32 in Misc. Civil Application No.104/1981 by the 2nd Joint Civil Judge, J. D., Bhusawal is hereby quashed and set aside.
- ii. Application Exh. 32 in Misc. Civil Application No.104/1981 is hereby allowed.
- iii. Writ petition is accordingly disposed of. No order as to costs.

(V. K. JADHAV, J.)

JPC