

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2084 OF 2016

Mr. Hemchand R. Shah]
An adult, Indian Inhabitant,]
Residing at Plot No.8,]
Andheri Co-op. Hsg. Soc. Ltd., 03rd floor,]
V. P. Road, Andheri (West), Mumbai-400 058].. Petitioner

Versus

1. Mr. Rameshchandra Govind Gavankar]
An adult, Indian Inhabitant,]
Presently occupying flat No.3, 02nd floor,]
Govind Smruti, Ashok Chakravarty Road,]
Kandivali (East), Mumbai-400 101.]
2. Mr. Kedar Rameshchandra Gavankar]
Flat No.3 and 4, 02nd floor,]
Govind Smruti, Ashok Chakravarty Road,]
Kandivali (East), Mumbai-400 101.].. Respondents

Shri. P. N. Vira, for the Petitioner.

Shri. S. A. Abhyankar, for the Respondents.

CORAM : R.M. SAVANT, J.
DATE : 29th FEBRUARY 2016

ORAL JUDGMENT

1. Rule. Having regard to the nature of the challenge raised, the

above Petition is taken up for hearing forthwith.

2. The writ jurisdiction of this court is invoked against the order dated 04.12.2015 passed by the Competent Authority, by which order, the application filed by the Petitioner herein who was the Applicant before the Competent Authority in Case No.56 of 2010 came to be rejected.

3. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner herein is the licensor of the premises in question and had entered into a Leave and Licence agreement dated 28.07.2010 for a period from 05.04.2010 to 04.10.2010 i.e. six months with the Respondent. Since the Respondent did not vacate the premises in question on the expiry of the licence period, the Petitioner invoked Section 24 of the Maharashtra Rent Control Act, 1999 and filed the said Case No.56 of 2010 seeking possession of the suit premises being Flat No.4, Second Floor, Govind Smruti Building, Ashok Chakravarty Road, Kandivali (East), Mumbai-400 0101. It seems that after the proceedings were initiated an application came to be filed on behalf of the Respondent by one Kedar Gavankar for appointing him as a guardian of the Respondent No.1 in view of the fact that the Respondent No.1 herein was a person unsound mind. The said application came to be allowed by the Competent Authority by order dated 19.09.2011 and the Respondent No.2

herein Kedar Gavankar was appointed as his guardian. The Petitioner i.e. the Applicant in the said Case No.56 of 2010 pursuant to the said order dated 19.09.2011 carried out amendment in the cause title by including the name of the said guardian Kedar Gavankar as Respondent No.2. The Respondent No.2 filed an application for dismissal of the said Case No.56 of 2010 in his capacity as guardian of the said Rameshchandra Gavankar. The said application is yet undecided. However, the said Case No.56 of 2010 was decided by the Competent Authority and an order granting possession to the Petitioner was passed on 25.06.2013. This resulted in the Respondent No.2 Kedar Gavankar filing a Revision Application before the Additional Commissioner, Konkan Division. The Additional Commissioner, Konkan Division for the reasons mentioned in his order dated 16.04.2014 set aside the order passed by the Competent Authority in view of the fact that there was a time lag of 18 months between the Competent Authority hearing the arguments and passing of the order. On remand, the Competent Authority is now seized with the matter and as the impugned order discloses the Respondent No.2 Kedar Gavankar has filed his written arguments, whereas the Petitioner was required to file written arguments, but filed the instant application for amendment of the said Case No.56 of 2010, in so far as the cause title is concerned, so as to sue the said Rameshchandra Gavankar through his guardian Kedar Gavankar as also

seeking the incorporation of paragraph 1(a) which is to the effect that on account of the termination of the Leave and Licence agreement dated 28.07.2010 the Respondent is in unlawful use, occupation and possession of the said flat and that the Respondent is represented by his son as his next friend and guardian by virtue of the order dated 19.09.2011. The said application was opposed to on behalf of the Respondent herein and the principal ground of opposition is on the ground that delay that has occasioned in carrying out the amendment in terms of the order dated 19.09.2011 passed by the Competent Authority appointing the said Kedar Gavankar as the guardian and also on the ground that the matter is kept for hearing and was adjourned for filing of the written argument of the Petitioner. The Trial Court as indicated above, rejected the said application by the impugned order. A reading of the impugned order discloses that it is a non-speaking order and the application has been rejected only on the ground that the same is belated.

4. The Learned Counsel appearing on behalf of the Petitioner sought to reiterate the case of the Petitioner in the amendment application and would submit that the amendment sought is to bring the cause title in sync with the order dated 19.09.2011 passed by the Competent Authority appointing the said Kedar Gavankar as the guardian of his father Rameshchandra Gavankar. It was the submission of the Learned Counsel

that through inadvertence the guardian has been shown as the Respondent No.2 which has given rise to the filing of the application for dismissal of the proceeding on the ground that the amendment has not been properly carried out. It was the submission of the Learned Counsel that the Respondents herein have also filed their reply in the said Case No.56 of 2010 through Kedar Gavankar as the guardian of the said Rameshchandra Gavankar. The Learned Counsel would contend that the amendment sought is therefore formal in nature and would not cause any prejudice to the other side.

5. Per contra, the Learned Counsel appearing on behalf of the Respondent i.e. guardian would contend that though the order has been passed as long back as in the year 2011, the amendment was not carried out in terms of the said order dated 19.09.2011 and an amendment application has been filed at this length of time after the Respondent i.e. Respondent in the application has filed his written arguments and the matter was kept for the filing of the written arguments of the Petitioner. The Learned Counsel sought to place reliance on the judgment of the Apex Court reported in AIR 1974 SC 130 in the matter of Dilbagh Rai Jerry Vs. Union of India and others, wherein, the Apex Court has mentioned the consequence of not carrying out amendment within time in terms of the order allowing the application. It was also the submission of the

Learned Counsel that proceeding filed against the person of unsound mind is a nullity and therefore since the said Rameshchandra Gavankar is sued in his individual capacity as is can be seen from cause title, the application being Case No.56 of 2010 is a nullity and not maintainable.

6. Having heard the Learned Counsel for the parties. The question is whether the Petitioner herein is entitled to amend the cause title of the application being Case No.56 of 2010 and also incorporation of paragraph 1(a). In the said context, it is required to be noted that the cause for moving the said application being Case No.56 of 2010 is the fact that though the licence period is over, the Respondent has not vacated the premises in question and continues to occupy the same. The remedy by way of Section 24 of the said Act has been specially provided in cases where the relationship is that of licensor and licensee. In so far as the said application filed under Section 24 is concerned, the proceedings are regulated under Section 43 of the said Act. The chapter heading wherein Section 43 appears discloses that such proceedings are in the nature of summary proceedings as the legislature deemed it fit to provide a speedy remedy against the licensees who have overstayed the licence period. In the instant case, as indicated above, the Respondent Kedar Gavankar himself filed an application before the Competent Authority as guardian of his father Rameshchandra Gavankar. Suffice it would be to state that the

said application came to be allowed by the Competent Authority by order dated 19.09.2011 and the said Kedar Gavankar was appointed as the guardian. However, unfortunately whilst carrying out the amendment the name of guardian was shown as Respondent No.2 rather than being shown as the guardian of the Rameshchandra Gavankar. Hence, in so far as the order dated 19.09.2011 is concerned, it is not as if no steps were taken pursuant to the order dated 19.09.2011 for arraying the name of Kedar Gavankar as the guardian. However, inadvertently the said Kedar Gavankar was arrayed as the Respondent No.2 when what was required to sue the said Rameshchandra Gavankar through his guardian Kedar Gavankar, that is what exactly the Petitioner is now seeking to do by seeking amendment in the said application being Case No.56 of 2010. As indicated above, the principal ground on which the application is opposed to is on the ground of delay. It is well settled that an amendment which is required for a complete and effectual adjudication of the proceedings is required to be granted and if the said principle is to be applied then in the instant case, the Competent Authority can be said to have erred in rejecting the application only on the ground of delay. In so far as the delay is concerned, though it is trite that there is no limitation prescribed for carrying out an amendment which is required to be carried out within the time frame within which the Authority directs the amendment to be

carried out or within a reasonable time. In the instant case, as indicated above, it is not as if the amendment was not carried out pursuant to the order dated 19.09.2011 the amendment was carried out but inadvertently or erroneously the guardian was shown as the Respondent No.2. The judgment of the Apex Court in the matter of *Dilbagh Rai Jerry's* case (*supra*), would therefore not aid the Respondents herein having regard to the facts of the present case.

7. It is also required to be noted that no application for seeking leave to defend has been filed by the Respondents herein, though such a course of action is mandated by Section 43 of the said Act. Hence, without seeking such leave to defend, whether an application for dismissal of the main application being Case No.56 of 2010 could have been filed, therefore, begs an answer. Be that as it may, in the facts of the present case, wherein this Court has come to a conclusion that the non-suing of the original Defendant Rameshchandra Gavankar through his guardian is only a technical flaw and the amendment sought is only formal, as the said Kedar Gavankar has already been shown as Respondent No.2, the impugned order dated 04.12.2015 would have to be quashed and set aside and is accordingly quashed and set aside. The application would stand allowed. The Petitioner herein is directed to carry out amendment in the cause title of the said Case No.56 of 2010 within two weeks from date.

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The Competent Authority is directed to proceed thereafter from the stage at which the proceedings were and decide the said application as per its convenience. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M. SAVANT, J]