

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 2119 OF 2016

Shree Rajasthan Co-operative  
Society Ltd.

...Petitioner

Versus

Mrs. Sashikala Ajay Rai & Ors.

...Respondents

.....

Mr. V. S. Pandey i/b Mr. S. U. Pandey for the Petitioner.

Mr. R. P. Singh for the Respondent No.1.

Mr. S. S. Ravi for the Respondent No.2.

**CORAM : R. M. SAVANT, J.**

**DATE : 1<sup>st</sup> MARCH, 2016.**

**P. C. :**

1. The writ jurisdiction of this Court is invoked against the order dated 11.12.2015 passed by the Trial Court by which order the application, Exhibit 51 for amendment of the plaint came to be allowed and the plaintiff i.e. respondent No.1 herein was permitted to amend the plaint as per the schedule annexed to the said application.

2. The amendment sought was only by way of incorporating a prayer by way of prayer clause (aa) which reads thus:

*(aa) The defendant No.2 to 7 be decreed and ordered to allot the alternate flat/unit constructed at the suit property in lieu of the suit premises and to hand over vacant and peaceful possession thereof to the Plaintiff and Defendant No.8*

3. In the suit as originally filed, the plaintiff by way of prayer clause (d) had sought a similar relief but the said relief was sought in respect of the possession of a unit in the commercial building proposed to be constructed on the site in question where the earlier building was situated. The plaintiff and respondent No. 8 herein are claiming to be the heirs of the original tenant. The suit in question has been filed for a declaration that the plaintiff be declared as a lawful tenant of defendant No.2 in respect of the suit premises situated at Plot No.2, CTS No. 260, village Kondivita, Jamnalal Bajaj Nagar, Andheri (East), Mumbai - 400 059. In the said suit other reliefs are also claimed. However in the context of the present petition the reliefs by way of prayer clause (d) is material which has already been adverted to in the earlier part of this order.

4. The plaintiff moved the application, Exhibit 51 seeking amendment of the plaint and the said amendment was sought on the ground that after the plaintiff consulted a Senior Advocate, he was informed that there is an infirmity in the suit and a prayer would have to be incorporated seeking possession of the alternate residential premises. Upon which the above application was moved for incorporation of the said prayer clause (aa). The said application, Exhibit 51 was opposed on behalf of the defendant No.1 and

defendant No.2 who filed their replies and the opposition was inter alia on the ground that a similar prayer is already there by way of prayer clause (d) in the suit (wrongly referred as prayer (b) in the impugned order). The Trial Court proceeded on the basis that it is prayer clause (b) which the defendants were alluding to in opposition to the amendment sought and held that since prayer clause (b) is different in material aspects than prayer clause (aa) which is sought by way of amendment the objection of the defendants could not be sustained. The Trial Court observed that since the suit is at a pretrial stage, the amendment sought can be allowed.

5. The learned Counsel appearing on behalf of the respondent No.1 herein i.e. original plaintiff, Mr. R. P. Singh makes a statement that the plaintiff would not press prayer clause (d) and would apply to the Trial Court for deletion of prayer clause (d) from the prayers. Statement accepted. Having regard to the well settled position in law as regards allowing a pretrial amendment and also having regard to the fact that the learned Counsel Mr. Singh appearing for the respondent No.1/plaintiff has made the statement as above, no case for interference with the impugned order is made out. The Writ Petition is accordingly dismissed. Amendment to be carried out on or before 16.03.2016.

6. The defendants would be at liberty to file their additional written statement, if so advised, within the time that would be stipulated by the Trial Court.

**(R. M. SAVANT, J.)**