

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.2949 OF 2016

M/s. Speedex Auto Garage

.. Petitioner

Versus

Madhavlal Narayanlal Pittie and another

.. Respondents

Mr. G. S. Godbole a/w Ms. Kavita A. Shah, for the Petitioner.

Mr. B. N. Shukla i/by B. N. Shukla & Co., for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 9th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 11.01.2016 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order the application Exh.148 for amendment of the plaint so as to incorporate paragraph 6(a), 10(a) and add prayer clause (b) came to be allowed. The Plaintiff was allowed to amend the plaint in terms of the said amendment sought.

2. The suit in question being RAE Suit No.89/157 of 2001 has been filed invoking Section 16(1)(n) of the Maharashtra Rent Control Act, 1999, on the ground that there is continuous non-user for the preceding

months on the part of the Defendant No.1 and Defendant No.2. In so far as the Defendant No.2 is concerned, it is averred in paragraph 6 that the Defendant No.1 has illegally sublet the premises to the Defendant No.2 in respect of which subletting, the Plaintiff has filed independent Suit No.1259/247 of 1997. It is further averred in paragraph 7 of the plaint that in the event the Defendant No.2 proves its alleged claim either that of a lawful sub-tenant or lawful assignee, then the Defendant No.2 also has lost protection under the Maharashtra Rent Control Act, 1999. In so far as Suit No.1259/247 of 1997 is concerned, the said suit came to be dismissed and held that the Defendant No.2 was a lawful sub-tenant. The Plaintiff carried the matter in Appeal by way of Appeal No.108 of 2005. The said Appeal also came to be dismissed by the Appellate Bench of the Small Causes Court and therefore, the decree of dismissal was final as also the finding that the Defendant No.2 was lawful sub-tenant. It seems that pursuant to the said dismissal of the Appeal that the application for amendment of the plaint was filed so as to incorporate paragraph 6(a) and paragraph 10(a) after paragraph 6 and 10 respectively. By way of paragraph 6(a), the averments relating to the dismissal of the Appeal filed by the Plaintiff and the fact that the Plaintiff has not filed any further proceedings thereafter has been stated. It is further stated that the Defendant No.2 has been accepted as a lawful sub-tenant/lawful assignee.

By way of paragraph 10(a), the Plaintiffs are claiming future mesne profits in respect of the premises in question. The Trial Court has allowed the amendment by the impugned order dated 11.01.2016 and the application is allowed inter-alia on the ground that there is a finality. In so far as the Defendant No.2 is concerned, he has declared as a lawful sub-tenant. In so far as the mesne profits are concerned, the Trial Court held that even without pleadings the Court can award mesne profits and therefore the amendment to the said extent was required to be allowed.

3. The Learned Counsel appearing on behalf of the Petitioner Mr. G. S. Godbole sought to contend that the averments sought to be incorporated by way of paragraph 6(a) would change the nature of the suit as the suit as originally filed is on account of the non-user by the Defendant No.1 and therefore the Trial Court ought not to have allowed the said amendment. In so far as the mesne profits are concerned, contention was raised by Mr. G. S. Godbole that the said prayer is beyond limitation. In my view, it is not possible to accept the contention of Mr. G. S. Godbole having regard to what has been averred in the original paragraph 7 and the consequences arising out of the dismissal of the suit which have already been provided for in the original paragraph 7. In so far as the aspect of mesne profits is concerned, in my view, the interest of justice would be served if the issue of limitation in so far as the aspect is

kept open for being agitated at the trial of the suit. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]