

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12454 OF 2015**

M/s. M.J.Foundation & Ors.

..Petitioners

Vs.

Zoeb Karimbhoy Dohadwala

..Respondent

**Mr. S. M. Gorwadkar Senior Advocate a/w Mr. S. H.Gangal for the
Petitioners**

Mr. D. M. Vyas i/b Mr. Daniel Arif for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 27-2-2014 passed by the Learned Judge of the Small Causes Court, presiding in Court Room No.25, by which order, the application Exhibit 18 filed by the Petitioners i.e. original Defendants for amendment of the Written Statement came to be rejected. By the said application, the Petitioners /Defendants had sought incorporation of paragraph 7(a) after paragraph (7).

The said proposed paragraph 7(a) reads thus :

“7(a) The Defendants state that the Rent demanded by the Plaintiffs at the rate of Rs.5976/- with permitted increased per month in Plaintiffs Advocates notice dated 16-8-2010 is excessive, exorbitant and more than the standard rent of the suit premises. The defendants therefore state that defendants should not suffer any longer and be compelled to pay more than

standard rent and permitted increased in respect of suit premises. The defendants therefore pray that standard rent of suit premises be fixed.”

Hence the reading of the proposed amendment sought vide paragraph 7(a) discloses that the rent of Rs.5976/- claimed by the Plaintiffs with permitted increases is sought to be questioned on the ground of it being excessive, exorbitant and more than standard rent of the suit premises.

2 In so far as the said aspect of the rent being excessive is concerned, the Defendants in paragraph 7 has already averred to the following effect:

“ The Defendants submit that the Plaintiff has failed to give break up and supporting documents to justify the exorbitant increase in rent from Rs.657 p.m. to rs. 5976/- p.m. as falsely demanded.”

Implicit in the said averment is that fact that the Defendants have already taken a stand that there is an exorbitant increase in rent. What the Defendants have sought by the proposed amendment is a relief that the standard rent be fixed.

3 In so far as the Maharashtra Rent Control Act 1999, is concerned, the fixation of standard rent is governed by Section 8 of the said Act in terms of Section 8(4)(a) the Court at any stage of a suit for recovery of rent, whether

with or without a claim for possession of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the Court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord. Hence what is posited by Section 8(4)(a) of the said Act is at any stage of proceedings of a suit for recovery of rent with or without possession, the court is empowered to fix the standard rent. The said power is in contradistinction to the power under Sections 8(1), 8(2) and 8(3) under which provisions the court fixes the standard rent in the eventualities mentioned therein.

4 In the instant case, the application for amendment of the Written Statement Exhibit 18 has been rejected on the ground that the claim for fixing of standard rent is time barred as the same is not filed within 3 years after the dispute has arisen and therefore a time barred relief cannot be allowed to be pleaded by way of filing an application for amendment. Firstly it is not clear on the basis of which provision the Trial Court has arrived at a conclusion that the period of limitation is of 3 years for filing an application for standard rent. Secondly it seems that the Trial Court has glossed over Section 8(4)(a) of the said Act which specifically empowers the Court at any stage of the Suit to fix the standard rent. The instant application can therefore be made referable to Section 8((4)(a) of the said Act. Hence it would be for the Trial Court to consider whether the rent demanded is excessive after it has been brought to

the notice of the Trial Court by the amendment which is sought. This court does not express any opinion on the said aspect. However, in my view, the Trial Court has grossly erred in rejecting the application on the ground mentioned in the order. The impugned order dated 27-2-2014 would accordingly have to be quashed and set aside and is quashed and set aside. The application Exhibit 19 would stand allowed. Amendment sought vide paragraph 7(a) would be allowed to be incorporated in the Written Statement. Since the relief claimed vide the said amendment is referable to Section 8(4)(a), the Trial Court would consider the same on the touchstone of the said provision. Amendment to be carried out within two weeks from date. The Trial Court would undoubtedly consider the said issue on its own merits and in accordance with law. It would also be open for the Plaintiffs to lead rebuttal evidence in view of the amendment which is allowed by the instant order.

5 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]