

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6825 OF 2016

Shri Ramraj Satyadev Pandey	..Petitioner.
Vs	
Ravishankar Vijayshankar Sharma	.. Respondent

Mr. Shriram S. Redis, Advocate for Petitioner.
Ms. Snehal R. Modi, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 04/08/2016

PC:

1. Heard Mr. Shriram Redis, learned counsel for the petitioner and Ms. Snehal Modi, learned counsel for the respondent at length. Rule. Ms.Modi waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the Judgment and order dated 4.1.2016 passed by the Appellate Bench of the Small Causes Court below Exhibit-22 in Appeal No. 118 of 2012. By that order, the Appellate Court allowed the application preferred by the respondent-plaintiff for amending the plaint so as to claim mesne profits/compensation as per Order 20, Rule 12(1) of C.P.C.

3. In support of this petition, Mr. Redis submitted that the application Exh.22 made by the plaintiff was served on the defendant on 21.12.2015 and 4.1.2016 was the first date after service. On behalf of the defendant, oral application for adjournment was made. He invited my attention to paragraph 4 of the impugned order and submitted that the Appellate Court rejected the application for adjournment and proceeded to decide the application on merits. He submitted that the defendant was denied fair and reasonable opportunity to contest the application.

4. On the other hand, Ms. Modi supported the impugned order. She invited my attention to Schedule of Amendment and submitted that by the proposed amendment, the plaintiff is seeking future mesne profits in respect of the suit premises from the date of termination of tenancy and no prejudice would be caused to the defendant if the amendment is allowed. In fact, in pursuance of the impugned order, the plaintiff has carried out amendment. She, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the application for amendment made by the plaintiff was served on the defendant on 21.12.2015. It is not in dispute that 4.1.2016 was the first

date after service of the application for amendment. In paragraph 4, the Appellate Court has observed thus:

“4. The application followed on 21.12.2015, copy thereof has been served on the advocate of the appellant on the same day. Thus, the appellant was duty bound to file reply to the application so as to proceed therewith. However, the appellant failed to file reply to the application, hence, it proceeded without reply. The holding advocate Mr Sameer Kolge for the appellant showed his inability to file reply and to take part in the application though he was called upon either to file reply or to make oral submission in order to support or oppose the application. However, he has preferred to remain mute spectator on a lame plea that his senior did not turn today in the court hence court may adjourn the matter to the detriment of court hours and valuable time of litigating public including state exchequer.”

6. Perusal of paragraph 4 shows that the Appellate Court observed that the defendant failed to file reply. Advocate holding on behalf of the defendant, showed his inability to file reply and argue the matter. Advocate for the defendant remained mute spectator on the ground that his senior did not come to the Court and sought adjournment. The Appellate Court observed that it will be detriment to the Court hours and valuable time of litigating public including state exchequer will be lost. In my opinion, the Appellate Court was not justified in refusing adjournment, more so when it was the first date after service of the application for amendment. The Appellate Court should have kept in mind salutary principle that justice should not only be

done but it must seem to have been done. By adopting hyper-technical approach by the Appellate Court, it has given rise to filing of the petition. The Appellate Court should have avoided this. On this ground alone, the impugned order is liable to be set aside thereby restoring Application Exh.22 for deciding the same afresh and on its own merits uninfluenced by the observations made herein. Hence, the following order.

(i) Impugned order dated 4.1.2016 is set aside and Application Exh.22 is restored to the file of the Appellate Court for deciding it afresh.

(ii) Mr Redis assures that within one week from today, the defendant will file reply and serve copy in advance on the other side during this period.

(iii) Rejoinder, if any, shall be filed within one week from service of reply by the defendant. The Appellate Court is requested to decide Application Exh.22 within two weeks after replies are filed. All contentions of the parties on merits are expressly kept open.

(iv) As amendment is already carried out in the plaint, while deciding the application the Appellate Court will also pass appropriate order in that regard. Liberty to apply to the Appellate Court for deciding the Appeal in time bound manner. If such application is made, Appellate Court will pass appropriate

order thereon.

(v) Rule is made absolute in the above terms.

(R.G.KETKAR, J.)