

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

WRIT PETITION NO. 7382 OF 2014

Smt. Subhadrabai Nivruti Lande	... Petitioner
V/s.	
Shri. Raosaheb Shankarrao Kumbhar	... Respondent

Mr. Balasaheb Deshmukh for the Petitioner.

**CORAM : K. K. TATED, J.
DATED : 16/03/2016**

P.C.:

. Heard learned Counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India, the petitioner defendant/tenant challenges the order dated 02.09.2013 passed by of 3rd Additional Judge, Small Causes Court, Pune below Exh. 47 in Civil Suit No. 274 of 2010 rejecting the petitioner's application under Order VI Rule 17 of Code of Civil Procedure, 1908 for carrying out appropriate amendment in written statement.

3 In the present case, the Respondent Plaintiff filed Civil Suit No. 274 of 2010 in the Court of Small Causes, Pune for possession of the suit property in the month of July 2010. Thereafter, the petitioner defendant filed their written statement dated 29.10.2010. The Respondent Plaintiff entered into witness box and his cross examination was in progress, at that time, the petitioner defendant filed application below Exh. 47 on 29.04.2013 for carrying out

amendment in written statement. That application was rejected by the Trial Court by impugned order dated 02.09.2013. Hence, the present Writ Petition.

4 The learned Counsel Mr. Deshmukh appearing on behalf of petitioner defendant submits that the Tribunal erred in coming to the conclusion that the petitioner has not shown sufficient cause for carrying out appropriate amendment in the written statement. He submits that during the pendency of the suit, the defendant learnt that the respondent landlord acquired some new properties and also created tenancy in favour of third person. He submits that the suit filed by the Respondent landlord was for possession of suit property on the ground of bonafide requirement. Hence, the petitioner defendant filed application for placing on record the subsequent event. He submits that the petitioner defendant stated in her application for amendment that because of mistake on the part of the earlier Advocate, it remained on the part of the defendant to place on record the properties acquired by the respondent during the pendency of the suit. He further submits that because of mistake on the part of the earlier Advocate, the jurisdiction point was not pleaded or taken in the written statement. Hence, Trial Court ought to have granted permission to the petitioner as per their application below Exh.47 for carrying out appropriate amendment in written statement.

5 In support of his contention, the learned Counsel for the petitioner relied on the judgment of the Apex Court in the matter of *Vidyabai & Ors. V/s. Padmalatha & Anr. reported in 2008*

DgLaw(SC) 908. The paragraphs 13 and 14, which read thus:

“13. Reliance has also been placed by Ms. Suri on Pradeep Singhvi and Anr. v/s. Heero Dhankani and Ors. 2004 13 SCC 432. Therein, the suit was filed in the year 1995 and, therefore, the proviso appended to Order VI, Rule 17 of the Code of civil Procedure had no application. Reliance has also been placed by Ms. Suri on Rajesh Kumar Aggarwal and Ors. v/s K. K. Modi & Others, 2006 4 SCC 385. No doubt, as has been held by this Court therein that the court should allow amendments that would be necessary to determine the real question of the controversy between the parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side.

14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

6 The learned Counsel for the petitioner submits that the Apex Court held that Court should allow the amendment which is necessary to determine the real question of controversy between the parties. He further submits that in the present proceeding, the suit filed by the Respondent Plaintiff was for bonafide requirement. Hence, it is necessary on the part of the defendant to place on record properties holding by the Respondent landlord. On the basis of these submissions, the learned Counsel for the petitioner tenant submits that the impugned order passed by the Trial Court dated 02.09.2013 below

Exh.47 be set aside and the application filed by the petitioner under Order VI Rule 17 for carrying out the amendment in written statement be allowed. He further submits that if the said application is not allowed, irreparable loss and injury will be caused to the petitioner.

7 I heard learned Counsel for the petitioner at length. It is to be noted that in the present proceeding, the petitioner filed application for carrying out amendment after more than 3 years from the date of filing of written statement. Apart from that the reason given by the petitioner that because of mistake on the part of earlier Advocate, all facts were not pleaded in her written statement cannot be sufficient ground for amendment of written statement. It is to be noted that as per amended provision of Order VI Rule 17, the court can allow the amendment even if the trial commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the objections before the commencement of trial.

8 Even the judgment cited by the learned Counsel for the petitioner in the matter of Vidyabai (supra) specifically stated that if amendment is necessary to determine the real questions of the controversy between the parties, then only the court should allow the same. The Apex Court also held that no prejudice to be caused to other side.

9 In the present proceeding, the Trial Court specifically recorded in paragraph 4 of the impugned order that the petitioner defendant already pleaded those grounds in written statement. Apart from that the Trial Court considering the judgment in the matter of Vidyabai

(supra) held that once, the trial is commenced the amendment cannot be allowed.

10 Considering this fact, I do not find any substance in the Writ Petition.

11 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)