

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7436 OF 2016

Chinubai Chinulal Shah ... Petitioner
Vs.
Mansukhlal M. Parekh (HUF) through its Karta
Vinodchandra Mansukhlal Parekh and ors. ... Respondents

Mr. Shardul Singh i/b. Ms Sushma Singh for Petitioner.
Mr. R. M. Haridas a/w. Mr. Neer Gala for Respondent No.1.
Mr. M. V. Khatavkar for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : JULY 8, 2016

P.C. :

Heard Mr. Singh, learned Counsel for petitioner, Mr. Haridas, learned Counsel for respondent No.1 and Mr. Khatavkar, learned Counsel for respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.3' has challenged the judgment and order dated 13.01.2015 passed by the learned Judge, presiding over Court Room No.16 of the Court of Small Causes at Mumbai below exhibit-35 in R.A.E.&R. Suit No.172/250 of 2006 as also the judgment and order dated 20.01.2016 passed by the appellate Bench of the Court of Small Causes at Bombay in Revision Application No.59 of 2015. By these orders, the Courts below rejected the application made by the defendant No.3 under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the written statement.

3. Mr. Singh submitted that respondent No.1-plaintiff has instituted two eviction Suits. In addition to these eviction Suits, two declaratory

Suits are instituted and all the Suits are pending. So far as the Writ Petition that arises from the Suit is concerned, respondent No.1-plaintiff has instituted Suit on the ground of carrying out additions and alternations of permanent nature without the consent in writing of the plaintiff and on the ground of arrears of rent. He has taken me through the assertions made in the plaint in paragraphs 3(b)(i) to (iv) of the plaint as also the assertions made in paragraph 12 of the written statement filed by the defendant No.3 in response to the allegations of additions and alternations of permanent nature. He submitted that pending the Suit, plaintiff got an expert appointed for inspection of the suit premises. He submitted the report. Defendant No.3 also appointed Mr. Sam P. Rao of Poonager Bilimoria & Co., Architects and Surveyors for inspecting the suit premises and submitting the report. The said Architect inspected the suit premises on 05.04.2013 and submitted the report on 22.05.2013. He submitted that plaintiff has filed affidavit of evidence on 09.11.2012. As these developments took place subsequent to filing of affidavit of evidence by plaintiff's witness, defendant No.3 took out application for amendment to bring on record the fact that the suit premises is as it is right from the inception. In short, defendant No.3 wants to contend that he has not carried out any additions or alterations in the suit premises as alleged by the plaintiff. It is, therefore, necessary for the defendant No.3 to amend the written statement. The learned trial Judge rejected the application on the ground that the proposed amendment is not necessary. Aggrieved by that decision, defendant No.3 preferred Revision Application and the appellate Court has upheld the order of the trial Court to the extent of proposed amendments in paragraphs 8A to 8C and partly allowed the Revision Application so as to permit the defendant No.3 to incorporate paragraph 8D in the written statement relating to leakages. He submitted that the Courts below ought to have allowed the application

for amendment in its entirety.

4. On the other hand, Mr. Haridas supported the impugned order. He submitted that perusal of the proposed amendments will show that the same are not necessary for deciding the controversy raised between the parties. Suit is instituted on the ground of carrying out additions and alterations of permanent nature without the consent in writing of the plaintiff and for arrears of rent. Defendant No.3 proposed amendment as if the Suit is for eviction on the ground of bonafide requirement. He, therefore, submitted that the proposed amendment is not necessary for deciding the controversy between the parties.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. With the assistance of the learned Counsel for the parties, I have perused the assertions made in the plaint as also in the written statement in relation to the ground of additions and alterations as also paragraphs 8A to 8D of the proposed amendment. Perusal of the proposed amendments clearly shows that they are in respect of the bonafide requirement. It is not in dispute that the plaintiff has not invoked the ground of bonafide requirement. While rejecting the application, the learned trial Judge has observed in paragraph 6 to the effect that defendant No.3 is claiming amendment as to the title and point of hardship. The Suit is filed on the ground of arrears of rent, breaches of terms of tenancy and additions and alterations of permanent nature. The learned trial Judge noted that the proposed amendment is not at all necessary for deciding the real controversy between the parties. While partly allowing the Revision Application, the appellate Court also recorded a finding that the proposed amendments in terms of prayer clauses 8A to 8C are not necessary and defendant is trying to take altogether different stand.

6. After considering the submissions advanced by the learned Counsel for the parties, I do not find that the Courts below have committed any error in holding that the amendment is not necessary for deciding the real controversy between the parties. As the defendant No.3 contends that the suit premises is as it is from the inception, he will be at liberty to substantiate that plea by adducing evidence. Subject to that, petition fails and the same is dismissed. It is expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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