

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8181 OF 2014

Soli S. Ragi

..Petitioner

Versus

Dilip Gobind Jhangiani

and others

..Respondents

....

Ms. Zenobia S. Irani, Advocate for the Petitioner.

Mr. Aurup G. Dasgupta, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 20th June, 2016

P.C.

1. Heard Ms.Irani, learned Counsel for the petitioner and Mr.Dasgupta, learned Counsel for the respondents at length.

2. Rule. Mr.Dasgupta waives service for the respondents. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2.3.2012 passed by the learned Judge, presiding over

Court Room No.23 of the Court of Small Causes at Bombay, below Exhibit-17 in R.A.E. Suit No.150/238 of 2009 as also the judgment and order dated 3.5.2014 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.111/2012. By these orders, the Courts below rejected the application made by the petitioner, hereinafter referred to as the 'defendant', under Order 6 Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the written statement.

4. By the proposed amendment, the defendant wants to incorporate paragraphs-3(a) to 3(c) as per the schedule given at page-41 of this Petition. Ms.Irani states that in paragraph-3 of the written statement, the defendant has asserted that the statements made in paragraph-1 of the plaint are substantially correct. In paragraph-1 of the plaint, the plaintiffs have asserted that they are the landlords of a building known as 'Elysium Mansion' situate at Walton Road, Colaba, Mumbai – 400 039 and the defendant is a tenant of the plaintiffs in respect of shop No.4 admeasuring 54 sq. mtrs. approximately situate on the ground floor of the said building.

5. Ms. Irani states that the defendant reiterates the contents of paragraph-3 of the written statement. She further states that the defendant is not pressing incorporation of paragraph-2(c) of the schedule at page-42. In other words, the defendant wants to incorporate paragraph-2(a) and 2(b) of schedule at page-41 and desires to incorporate them as paragraphs-3(a) and 3(b) in the written statement.

6. Mr.Dasgupta has no objection for incorporation of paragraphs-2(a) and 2(b) of schedule at page-41 as paragraphs-3(a) and 3(b) in the written statement after paragraph-3. He, however, submits that the plaintiffs may be given a liberty to file additional affidavit of evidence, if they so desire. Ms.Irani has no objection for adopting this course. In view thereof, by consent of the parties, writ petition is disposed of in following terms :

- (i) Application at Exhibit-17 filed by the defendant is partly allowed. The defendant is permitted to incorporate paragraphs-2(a) and 2(b) of schedule at page-41 of the petition as paragraphs-3(a) and 3(b) of the written statement.

- (ii) Ms.Irani assures that the defendant will carry out the amendment within 14 days from production of an authenticated copy of this order before the trial Court with copy of amended slip to the plaintiffs.
- (iii) The plaintiffs are at liberty to file additional affidavit of evidence, if they so desire.
- (iv) The statement made by Ms.Irani that the defendant reiterates the contents of paragraph-3 of the written statement is recorded.
- (v) Rule is partly made absolute. Petition is disposed of in aforesaid terms with no order as to costs.
- (vi) Parties concerned, including the trial Court, to act upon an authenticated copy of this order.

(R. G. KETKAR, J.)