

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 7826 OF 2015

Nootan Shantaram Bhat
And Ors.

...Petitioners

Versus

Ashok Mohan Vernekar

...Respondent

....

Ms. Ranjana Parekh a/w. Sameer R. Bhalekar and Ms. Vidita S. Bhalekar, Advocate for the Petitioners.

Mr. P.S. Dani, Senior Advocate a/w. Ms. Jui A. Nerurkar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 27th July, 2016

P.C.

1. Heard Ms.Ranjana Parekh, learned Counsel for the petitioner and Mr. P.S. Dani, learned Senior Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, 1950, the petitioners have challenged the judgment and order dated 7.8.2013 passed by the learned Judge, presiding over Court Room No.23 of the Court of Small Causes at Mumbai below Exhibit-77 in R.A.E. Suit No.1162/3549 of 1985 as also the judgment and order dated 10.6.2015 passed by the Appellate Bench of Small Causes Court at Mumbai in (iii) Revision Application No.252/2013. By these orders, the Courts below

rejected the application Exhibit-77 made by the petitioners, hereinafter referred to as 'defendant No.1'

3. Rule. Ms. Nerurkar waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By application Exhibit-77, the defendants have prayed for amending the written statement in terms of the schedule appended to that application. The defendants want to incorporate paragraphs-15[a] to 15[e] after paragraph-15 and incorporate paragraph-16(a). By paragraph 15(a), the defendants have challenged the maintainability of the suit on the ground that the lease deed dated 9.4.1962 is not validly and legally terminated. It is further contended that the notice of termination dated 11.5.1984 terminating said lease is invalid, bad in law and not binding upon the defendants. Consequently the plaintiff has no cause of action against the defendants. By paragraph-15[b], the defendants submitted that the rent in respect of the suit premises is payable @ Rs.2000/- per month. By paragraph-15[c], the defendants have referred to the proceedings filed by the plaintiff relating to the suit premises in this Court, Bombay City Civil Court and the Court of

Metropolitan Magistrate. By paragraph-15[d], the defendants contend that without prejudice to the statements made by them in the additional written statement dated 25.10.2010 the sub tenant is protected under the provisions of the Bombay Rent Act. By paragraph-15[e] the defendants contended that they have obtained all the permissions from all the statutory authorities.

5. Ms. Parekh states that the defendants are present in the Court. She has tendered photocopy of their identity cards which are taken on record and marked "X" collectively for identification. Upon taking instructions from them, she states that the defendants are not pressing the amendment as proposed in paragraph-15[a], 15[b], 15[d] and 15[e]. She submitted that the defendants may be permitted to refer and rely upon the proceedings referred in paragraph-15[c] of the proposed amendment. Statements made by Ms.Parekh, on instructions are recorded. Mr. Dani did not seriously dispute this.

6. In view thereof, the defendants will not agitate the contentions raised in paragraphs-15[a], 15[b], 15[d] and 15[e]. The defendants are permitted to refer and rely upon the proceedings referred in paragraph-15(c).

7. As far as the proposed amendment in respect of paragraph-16[a] is concerned, the defendants are permitted to delete the figure '8' by inserting in its place figure '5' in paragraph-3. In paragraph-9 the defendants are permitted to substitute the word "connected" by the word "disconnected". In paragraph-12, the defendants are permitted to substitute the word "denies" by the word "states". In paragraph-15, the defendants are permitted to substitute the figure "Rs.10,000/-" by "Rs.12,000/-", as these are typographical errors. Mr. Dani does not seriously dispute this. In view thereof, application Exhibit-77 stands partly allowed in aforesaid terms.

8. Learned Counsel appearing for the plaintiff and the defendants assure that they will extend full cooperation for early disposal of the suit as the suit is of the year 1995. Assurance given by them is recorded. In the light of the above, Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)