

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8290 OF 2015

Sugandha Gangaram Betkar

(Since deceased through legal heirs)

Mrs. Chaya Prakash Jadhav and another

.. Petitioners

Versus

Seetaram Dhodu Betkar

(Since deceased through his legal heirs)

Deepak Seetaram Betkar and others

.. Respondents

Mr. S. V. Masurkar, for the Petitioners.

Ms. Shweta Dudhane-Chury i/by Mr. M. A. Dudhane, for the
Respondent Nos.1(a) to 1(d).

Mrs. Meena H. Doshi, for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 3rd MARCH 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 23.03.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the Revision Application No.188 of 2014 came to be allowed and resultantly, the order dated 22.04.2014 passed by the Trial Court i.e. Learned Judge of the Small Causes Court, rejecting the application Exh.19 filed in RAD Suit No.1164 of 2008 came to be set aside.

2. The Petitioners herein are the heirs of the original Defendant No.1 and the Respondent Nos.1(a) to 1(d) are the original Plaintiffs. The suit in question is a declaratory suit seeking declaration of tenancy in favour of the Plaintiffs. It seems that the Plaintiffs and the Defendants are all the heirs of the original occupant of the suit premises which are situated in the precincts of the Kohinoor Mill at Dadar. Whilst the Plaintiffs are claiming tenancy in respect of the suit premises, it seems that the other heirs i.e. the Defendants to the suit excluding the National Textiles Corporation are opposing the grant of declaration only in favour of the Plaintiffs. The suit is at the stage where the pleadings can be said to be complete but the issues are yet to be framed. It seems that the National Textiles Corporation has also not filed its written statement though in this Petition contentions were sought to be raised as regards maintainability of the suit.

3. By way of the amendment sought vide application Exh.19, the Plaintiffs are now seeking to incorporate the relief of they being permitted to enter and occupy the premises. The Trial Court rejected the said application by order dated 22.04.2014 on the ground that the amendment if allowed would change the entire cause of action as well as the nature of the suit thereby prejudicing the Defendants. The Revisionary Court has allowed the said application on the ground that by the amendment sought

the Plaintiffs are only seeking to assert their rights, heirs of the deceased Plaintiff and that the amendment is necessary for a complete and effectual adjudication of the suit. The Appellate Bench was also not in agreement with the Trial Court in so far as whether the nature of the suit would change. The Appellate Bench accordingly has by the impugned order dated 23.03.2015 allowed the Revision and thereby allowed application Exh.19 which was rejected by the Trial Court. In my view, having regard to the well settled principles applicable to the pre-trial amendment, no case for interdiction in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

4. However, it would be open for the parties including the National Textiles Corporation to file their written statement/additional written statement with the permission and within the time that would be stipulated by the Trial Court.

[R.M. SAVANT, J]