

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8070/2014

Rehana Afza Sayyed

... Petitioner

V/s.

Ismail Amasjid Kumte

... Respondent

Mr. C. N. Chavan for the petitioner
Mr. P. J. Thorat for the Respondent.

CORAM: K.K. TATED, J.
DATED : MARCH 23, 2016

PC. :

1. Heard the learned counsel for the parties. This petition is filed by the defendant challenging the order dated 19.04.2014 passed by the trial court below exhibit 72 in RAE Suit N.845/2001 and order dated 10.07.2014 passed by the Appellate Bench of the Small Causes Court in Revision Application No.84/2014 rejecting the petitioner – defendant's application for carrying out appropriate amendment in written statement.

2. In the present proceedings, the respondent plaintiff filed RAE Suit No.845/2001 on 03.11.2001 and thereafter the defendant filed written statement in the month of July 2002. Thereafter the defendant filed application under Order VI Rule 17 of the Code of Civil Procedure, 1908 on 05.02.2014 for carrying out amendment which was rejected by

the trial court and same was confirmed by the appellate court. Hence, the Writ Petition.

3. The learned counsel for the petitioner submits that both the courts below erred in coming to the conclusion that the defendant has not made out any case for carrying out amendment in written statement under Order VI Rule 17 of the Code of Civil Procedure, 1908. He submits that, immediately after the defendant got knowledge that the respondent plaintiff obtained possession of Room No.10 by executing the decree in suit being RAE Suit No.787/2001, 854/2001 and 840/2001, he made an application under Order VI Rule 17 of the Code of Civil Procedure, 1908. The learned counsel for the defendant submits that both the courts below erred in coming to the conclusion that the defendant has made an application at belated stage. He submits that both the courts below failed to consider the fact that the amendment in written statement can be allowed at any stage including in an appeal. In support of his contention, the learned counsel for the defendant relies on the judgment in the matter of *Mam Raj Vs. Smt. Sabiri Devi and Ors.* AIR 1999 Punjab and Haryana 96 (Paragraph 10), *Quality Polly Closures Vs. Executive Engineer, MSEB, Satara & Anr.* 2000 (4) MH.L.J. 203 and in the matter of *Krishna Shankar Moghe Vs. Sitaram Gangadhar Shende* 2003 (1) MH.L.J.233.

4. The learned counsel for the petitioner submits that if application filed by the defendant under Order VI Rule 17 of the Code of Civil Procedure, 1908 is not allowed, irreparable loss will be caused to the defendant. Hence, in the interest of justice, this Hon'ble Court be pleased to set aside the orders passed by both the courts below and

allow the defendant's application for carrying out appropriate amendment. He submits that if application is allowed, it is not going to affect the rights of the plaintiff.

5. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Writ Petition. He submits that the defendant made an application for amendment after more than 12 years from the date of filing the written statement. He further submits that when the matter was kept for arguments and when the Advocate for the plaintiff completed his arguments and the defendant advocate started arguing the matter, at that time, the defendant made an application for carrying out amendment in the written statement. He further submits that the defendant has not disclosed in her application as to when she learnt about the subsequent events. He submits that even the applicant has not shown sufficient cause for condonation of delay. He submits that in the interest of justice this Hon'ble Court be pleased to dismiss the petition.

6. Heard both sides at length. It is to be noted that, it is an admitted fact that the application for amendment was made during the course of final arguments of the defendant. Even bare reading of the application does not disclose any reason as required under Order VI Rule 17 of the Code of Civil Procedure, 1908 for allowing the application at belated stage.

7. The authorities cited by the defendant as stated hereinabove are not applicable in the facts and circumstances of the present case, because case in hand, the plaintiff completed his final arguments and

the counsel for the defendant started arguments at that time, the defendant made an application for amendment. Considering these facts, the Writ Petition stands dismissed.

(K.K. TATED, J.)