

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10692 OF 2016

Mrs. Priscilla Harry Desouza ..Petitioner.
Vs
Shri Hanumant Baburao Jagtap .. Respondent

Mr.Sanjay Kshirsagar, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 16/09/2016

PC:

1. Not on Board. At the request of Mr. Kshirsagar, taken up for admission. Heard Mr. Sanjay Kshirsagar, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 5.1.2016 passed by the learned 3rd Addl. Judge of Small Causes Court, Pune below Exhibit-90 in civil Suit No.359 of 2011. By that order, the learned trial Judge rejected the application made by the defendant for further cross examination of the plaintiff in view of recasting of issues on 25.11.2015 during the cross examination of the defendant.
3. The respondent, hereinafter referred to as 'plaintiff', has instituted suit against the defendant, principally, on two grounds
(i) non-user as contemplated by section 16(1)(n) of the

Maharashtra Rent Control Act, 1999 (for short, 'Act') and (ii) change of user. On 11.6.2012, the learned trial Judge framed issues at Exh.15. Parties led evidence. During the course of recording of evidence and after considering the submissions advanced by the parties, the learned trial Judge recast issues on 25.11.2015. The learned trial Judge gave liberty to the parties to lead additional evidence on the issues which were recast, if they so desire.

4. In support of this petition, Mr. Kshirsagar invited my attention to the order passed by the learned trial Judge on 25.11.2015 during the course of cross examination of the defendant. The defendant submitted that his further cross examination be deferred as the court has recast issues. The defendant prayed that the plaintiff be directed to either lead additional evidence in view of recasting of issues or give purshis. The learned trial Judge did not accept the request made by the defendant by observing thus:

“Admittedly the defendant is under cross examination, part of the cross examination recorded, no doubt, the issues are re-casted but, at this stage the plaintiff cannot be asked to lead evidence when the defendant is under cross-examination or if the plaintiff is not willing to lead additional evidence, the defendant cannot be asked to lead

examination-in-chief when cross examination is not completed. If it is followed then, it will be against the established procedure. Therefore, the plaintiff to complete the cross examination of the defendant and after her cross examination is completed, both the parties if they desire may lead additional evidence in view of recasting of issues. Hence, the plaintiff to cross examine the defendant who is present in the Court.'

In substance, the learned trial Judge observed that the plaintiff should complete cross examination of the defendant and both the parties may lead additional evidence in view of recasting of the issues.

5. The defendant thereafter filed application Exhibit 90 on 4.12.2015, that is to say, after completion of his cross examination on 1.12.2015 praying for permission to cross examine the plaintiff in view of recasting of the issues on 25.11.2015. Mr. Kshirsagar invited my attention to paragraph 6 of the application and submitted that the defendant will have no opportunity to cross examine the plaintiff on the issues which are recast on 25.11.2015. By the impugned order, the learned trial Judge rejected the application. During the course of hearing, Mr Kshirsagar stated that the plaintiff has not led additional evidence in pursuance of the recasting of issues on 25.11.2015.

While rejecting the application, in paragraph 6, the learned trial Judge observed thus:

“6. Admittedly, the evidence of the plaintiff is recorded as long as on 16/10/2013 by appointment of court commissioner. The plaintiff also examined his son and closed the evidence on 21.3.2014. Record shows that, vide Exh.76 similar application for recalling of the plaintiff for further cross examination was given by the defendant which stood rejected. Record also shows that, the issues are recasted on 25/11/2015 and thereafter the evidence of defendant is recorded and closed on 1/12/2015. All these circumstances show that the defendant intends to prolong the matter as possible as he could. The matter being under Rent Control Act need to be disposed of within one year from the date of service of summons under section 38 of the Act. The present matter is pending since the year 2011. The parties were given liberty to lead evidence on the recasted issues does not mean that, the parties should frustrate the object of the enactment. Record shows that the plaintiff was cross examined thoroughly by the defendant since beginning was knowing about the grounds of the plaintiff.”

6. In view of the reasons stated in paragraph 6 of the impugned order, I do not find that the learned trial Judge has committed any error. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

7. It is, however, 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. It is needless to clarify that as per the liberty granted by the learned trial Judge,

the defendant will be at liberty to lead additional evidence on the issues which are recast, if she so desires and the plaintiff is at liberty to cross examine the defendant on the additional evidence, so led.

(R.G.KETKAR, J.)