

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10265 OF 2014**

Velji Mulji Savla & Anr.

..Petitioners

Vs.

M/s. Ish Home Private Limited & Anr.

..Respondents

Mr. Girish Godbole i/b Apte & Co. for the Petitioners

Mr. Javed Khan for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 8th JANUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 15-7-2014 passed by the Appellate Bench of the Small Cause Court by which order, the Revision Application being NO.103 of 2014, came to be allowed and resultantly the order dated 1-3-2014 rejecting the application Exhibit 31 filed for amendment of the plaint filed by the Respondents i.e. original Plaintiffs, came to be set aside and in turn the said application Exhibit 31 came to be allowed.

2 The Petitioners herein are the original Defendants in the Suit. The suit property as originally described in the plaint is Shop No.4, House No.409A Ground floor, Kadri Mansion, Prabhadevi Mumbai 400 025. The Suit is founded on the grounds of subletting and arrears of rent. The Written Statement came to be filed on behalf of the Petitioners herein and the Petitioners stated that the tenanted premises are not only Shop No.4 but also

Room No.1 in the said building. In the said Written Statement it was also averred that the Suit suffers from non joinder of necessary parties. An additional Written Statement came to be filed on behalf of the Defendants. The Suit was at the stage where the issues were framed, however admittedly the affidavit of evidence was not filed on behalf of the Plaintiffs. The Plaintiffs moved the instant application Exhibit 31 for amendment of the plaint in terms of the schedule which was annexed to the said application Exhibit 31. The sum and substance of the amendment was to include Room No.1 by substituting Shop No.4 as the suit premises by the Shop No.4 and Room No.1 admeasuring 245.67 sq.ft. The Plaintiffs also sought to incorporate the gist of the report submitted by the Court Commissioner i.e. Architect Mr. Kanaiyaa D. Vakharia who was appointed on the application made by the Plaintiffs. The gist of the alleged illegalities was sought to be incorporated in the plaint by way of incorporation of Paragraph 4(A). The said application Exhibit 31 was replied to on behalf of the Petitioners / Defendants and the objection taken was that by the amendment, the right which has accrued to the Defendants was sought to be taken away.

3 The Trial Court considered the said application and order dated 1-3-2014 rejected the same. The rejection is principally on the ground of there being a delay of 7 years in filing the application. The Trial Court observed that though the cause title was amended by inclusion of the partnership firm as a

Defendant. However, the proposed Respondent was not joined and thereby the cause of action against the proposed Respondent was waived. The Trial Court also observed that the Plaintiffs have not explained the huge delay which has occurred in filing the application. The Trial Court held that in so far as the report is concerned though the same is submitted in the year 2011, the amendment was moved in the year 2013. Hence by applying the law laid down by the Apex Court in the case of **Shiv Gopal Sahu Vs. Sitaram Sarugi & Ors** reported in **2007 ALL SCR 1638**. The Trial Court came to a conclusion that the amendment sought could not be allowed and accordingly rejected the same.

4 The Plaintiffs i.e. the Respondents herein aggrieved by the said order dated 1-3-2014 carried the matter by way of a Revision before the Appellate Bench of the Small Cause Court. The Appellate Bench of the Small Cause Court has by the impugned order dated 15-7-2014 has allowed the said application. The Appellate Bench of the Small Cause Court has dealt with each of the grounds on which the Trial court has rejected the said applications and found that the said grounds were not sustainable as the Appellate Bench of the Small Cause Court was of the view that an amendment which leads to a complete and effectual adjudication of the Suit should have been allowed. The Appellate Bench of the Small Cause Court adverted to the fact that the Commissioner came to be appointed pursuant to the order dated 5-2-2013 and therefore in so far as the alleged additions and alterations are concerned, it

was post filing of the Suit and in the year 2013 and therefore the amendment application moved in the year 2014, could not be said to be grossly delayed.

5 In so far as the joining of the proposed Defendant is concerned, the Appellate Bench of the Small Cause Court was of the view that the proposed Defendant required to be joined so as to avoid multiplicity of proceedings and so as to decide the real dispute between the parties. The Appellate Bench of the Small Causes Court distinguished all the facts of the present case from the facts as prevailing in the cases of Shiv Sahu Gopal (Supra) and **Sasa Detergent Division Vs. Shri Damodar S. Mudliyar & Ors. reported in 2012(6) ALL MR 268** on which reliance was placed on behalf of the Defendants. The Appellate Bench of the Small Cause Court also adverted to the fact that since the affidavit of evidence has not been filed the trial could not be said to have commenced. It seems that pursuant to the impugned order the amendment in the plaint has already been carried out on 25-7-2014.

6 In my view, having regard to the well settled principles applicable to Order VI Rule 17 of the Civil Procedure Code in respect of which judgments were cited on behalf of the Plaintiffs, the impugned order passed by the Appellate Bench of the Small Cause Court allowing the application Exhibit 31 cannot be said to suffer from any infirmity or illegality for this court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]