

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

WRIT PETITION NO. 1274 OF 2017

Shri Vishwas Laxmanrao Jadhav, ..Petitioner.
since deceased, through L.Rs
Shri Satish V. Jadhav

Vs

Shri Anil Tukaram Ghatge, since .. Respondents
deceased, through L.Rs and Ors.

Mr. Mithun Mahajan, Advocate for Petitioner.
Mr.P.D.Dalvi, Advocate for Respondents no. 1 and 4.

**CORAM : R.G.KETKAR,J.
DATE : 09/02/2017**

PC:

1. Not on Board. At the request of Mr. Mahajan, taken up for admission. Heard Mr. Mithun Mahajan, learned counsel for the petitioner and Mr.P.D.Dalvi, learned counsel for respondents no. 1 and 4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.1', has challenged the Judgment and order dated 20.10.2016 passed by the learned District Judge, Kolhapur below Exhibit-65 in Regular Civil Appeal No. 375 of 2011. By that order, the learned District Judge rejected the application filed by defendant no.1 under Order VI, Rule 17 of C.P.C. for amendment of written statement.

3. In support of this petition, Mr. Mahajan submitted that the proposed amendment does not change the nature of defence set

up by defendant no.1. The proposed amendment is only elaborating the contentions already raised in the written statement by defendant no.1 about tenancy rights in 1968. The learned District Judge was, therefore, not justified in rejecting the application.

4. On the other hand, Mr. Dalvi submitted that defendant no.1 had raised plea of tenancy. On that basis, the learned trial Judge framed issue no.1 as to whether defendant no.1 proves that he is a tenant in the suit property since 1968 and the same was answered in negative. The suit was decreed. Aggrieved by that order, Appeal is preferred and at the time of final arguments of Appeal, the present application is filed.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge had framed issue no. 1 as regards tenancy rights of defendant no.1 and the same was answered in negative. Suit was instituted in the year 1995. As the learned trial Judge has already framed issue as regards tenancy and answered in negative, it will be open to the defendant no.1 to agitate that contention before the District Court and for that it is not necessary to amend the written statement. For the reasons recorded in paragraph 4, no fault can be found with the impugned order. The learned District Judge observed that the proposed amendment is not necessary

for deciding the real controversy between the parties. On the basis of pleadings and evidence already on record, dispute between the parties can be decided finally. Hence, Petition fails and the same is dismissed. 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 proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)