

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

WRIT PETITION NO.4168 OF 2017

Shri Raichand Brijlal Kunkulol

... Petitioner

Vs.

Ms.Mangala Krishnaji Deshmukh & anr.

... Respondents

Mr.R.D. Soni with T.R. Momaiyah for the Petitioner
Mr.S.S. Deshmukh for Respondents.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 26, 2017**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. This Writ Petition filed under Article 227 of the Constitution of India challenges the order dated 16.2.2015 passed below exhibit 165 in Dispute No.126 of 1998 by the Cooperative Court No.1, Pune, at Pune, which was confirmed by the Cooperative Appellate court, Bench at Pune, Pune vide order dated 16.11.2015 in Revision Application No.18 of 2015.

3. The respondent No.1 had filed a dispute before the cooperative Court that she is entitled to a plot in the society. She filed the dispute in 1998 and thereafter she filed application under Order 6 Rule 17 for amendment of the plaint in 2013, whereby the disputant wanted to add alternate prayer of compensation of Rs.25 lakhs and also add a claim for flat No.32 on 8th floor in building No.5-3-D which was reserved by the petitioner pursuant to the interim order passed by the Cooperative Court. The said amendment was allowed and hence, this petition.

4. The learned Counsel for the petitioner has submitted that this amendment is sought at a very late stage and so, it should not be allowed. He further submitted that the dispute of the plaintiff is based on the stand of his status as a tenant co-ownership society. However, by way of amendment, she has changed the stand as tenant co-partnership society, which is not permissible. He has further submitted that the amendment sought of compensation of Rs.25 lakhs and claim of one flat on 8th floor are mutually destructive case of the plaintiff. The learned Counsel has submitted that the plaintiff can either claim the damages or a flat in lieu of the the plot. He has further argued that the amendments

which are allowed are going to change the entire situation of the dispute and evidence of the disputant has commenced before the cooperative Court. It is further submitted that no satisfactory answer is given by the respondents/disputant as to why there is a delay of more than 13 to 14 years in filing the amendment application.

5. The learned Counsel for the respondents has submitted that he was an owner of the plot which is taken by the respondent No.2/society and now they have constructed a building on the plot. He has filed the dispute for his right in the plot on which the building is standing. He argued that the interim relief granted by the trial Court was challenged in Appeal from Order No.293 of 2001 by the petitioner. However, the said Appeal from Order was disposed of on the basis of an undertaking given by the petitioner that flat No.32 on 8th floor in the building 5-3-D would be reserved for respondent No.1 / original disputant.

6. The learned Counsel has further submitted that the amendment is sought to reserve the same flat and also for damages of Rs.25 lakhs as the respondent felt it necessary to

make the amendments in respect of the flat in view of the undertaking given before the High Court in the Appeal from Order. Thus, he submitted that the petition be dismissed.

7. Perused the orders of the Cooperative Court and the appellate Court. Both the Courts have given concurrent findings. After going through the orders, in my view, no perversity or illegality is found. The suit is of the year 1998 and hence, the proviso of due diligence cannot be attracted in lieu of section 16 of the Civil Procedure Code (Amendment) Act, 2002 as the said amendment shall not apply in respect of any pleadings filed before the commencement of the Civil Procedure Code (Amendment) Act, 1999 and the sections of the said Act. The submissions of the learned Counsel for the respondents that the amendment was found necessary in view of the undertaking given by the petitioners in the Appeal from Order, is found satisfactory. The objection raised by the learned Counsel for the petitioner that there is a change of stand by the respondent i.e., from tenant co-ownership society as is claimed is due to tenant co-ownership society to the present tenant co-partnership society will be a matter of evidence and appreciation of the said evidence at the time of trial and

whether she is entitled to such alternate reliefs or not is also a matter of evidence and this cannot come in the way of allowing the application under Order VI Rule 17 of the Civil Procedure Code.

8. The view taken by both the Courts is found correct and hence, not to be disturbed and accordingly, petition is dismissed.

9. The petitioners may file their additional written statement if they want. All contentions are kept open. The dispute being of 1998, the Cooperative Court may proceed with the trial and expedite the matter and conclude the same within six months from today. The parties shall cooperate with the trial Court.

10. Rule discharged.

(MRIDULA BHATKAR, J.)