

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 11839 OF 2017**

**Thirdwave Construction Pvt Ltd. & Anr
Vs.**

..Petitioners

Shri Nitinbhai Ramniklal Gandhi

..Respondent

**WITH
WRIT PETITION St. NO. 11840 OF 2017**

**Thirdwave Construction Pvt Ltd. & Anr
Vs.**

..Petitioners

Mrs. Saroj Nitin Gandhi

..Respondent

**WITH
WRIT PETITION St. NO. 11841 OF 2017**

**Thirdwave Construction Pvt Ltd. & Anr
Vs.**

..Petitioners

Shri Dilipbhai Ramniklal Gandhi

..Respondent

**Mr. Mayur Khandeparkar a/w Mr. Sanjay Kadam, Ms Apeksha Sharma,
Sanjil Kadam, Mr. Deepak Enakphale and Ms Saylee Rajpurkar i/b Kadam
& Co. for the Petitioners**

Mr. Nilesh Soni i/b Mr. D. D. Singh for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 27th APRIL, 2017

P.C.

1 The above Writ Petitions take exception to the identical orders dated 15-3-017 by which orders the Revision Applications filed by the Respondents herein i.e. the Defendants came to be allowed and resultantly the orders passed by the Trial Court dated 9-11-2016 came to be set aside and consequently the amendment applications being Exhibit 32, Exhibit 34 and

Exhibit 39 in turn came to be allowed.

2 The Petitioners are the original Plaintiffs in the RAE Suits filed by them for eviction of the Respondents /Defendants from the suit premises on the ground of non user. The Suits are at the stage where the affidavit of evidence has been filed on behalf of the Plaintiffs and the cross-examination is yet to begin. The said amendment applications Exhibit 32, Exhibit 34 and Exhibit 39 were moved by the Defendants seeking amendment of the Written Statements filed in the respective Suits to incorporate averments as regards non occupation of the premises during the day. The said applications were rejected by the Trial Court on the ground that the facts sought to be brought on record were very well known to the Defendants when they filed the Written Statements and that there are no reasons mentioned in the application by the Defendants as to why the said facts could not be incorporated at the time of the filing of the Written Statements. The Trial Court therefore reached a conclusion that the test prescribed by Order VI Rule 17 of the Civil Procedure Code was not satisfied by the Defendants.

3 The Defendants carried the matter by way of Revision Applications to the Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes Court by the impugned orders all dated 15-3-2017 has allowed the Revision Applications and thereby set aside the orders passed

by the Trial Court. The Revisionary Court having regard to the averments which are sought to be incorporated in the Written Statements came to a conclusion that the said averments only amplify the original stand taken by the Defendants in the Written Statements and in view thereof the amendment could be allowed as no prejudice would be caused to the Plaintiffs.

4 In my view, having regard to the nature of averments sought to be incorporated as also considering the averments as originally appearing in the Written Statements, the finding of the Revisionary Court as regards the factum of the averments amplifying the original stand taken by the Defendants cannot be found fault with. Hence no fault can be found with the impugned orders passed by the Revisionary Court allowing the Revision Applications. Hence no case for exercise of Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

5 At this stage, the Learned Counsel for the Petitioners prays for continuation of the stay. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]