

dik

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

WRIT PETITION NO. 6477 OF 2017
IN
REVISION APPLICATION NO. 291 OF 2017
IN
APPLICATION BEING EXHIBIT NO. 34 OF 2016
IN
R.A.E. SUIT NO. 507/950 OF 2008

Kantilal Dharshi Shah	...Petitioner.
vs	
Jayant Dharshi Shah	...Respondent

.....
Mr Chandra Naik for the Petitioner.
Mr Chetan Yadav i/b R.V. & Co. for the Respondent.
.....

CORAM : **B.P.COLABAWALLA, J.**
JUNE 20, 2017.

P.C. :

This Writ Petition has been filed challenging the order passed by the Appellate Bench of the Small Causes Court of Mumbai in Revision Application No.291 of 2017. By the impugned order the Appellate Bench was pleased to allow the amendment sought for by the respondent herein who is the defendant before the trial Court.

2 The impugned order was basically assailed before me on two grounds. The first ground raised by the learned advocate for the petitioner was that the amendment has the effect of retracting the admission that has been made by the defendant. According to the learned advocate, in the plaint the plaintiff has specifically averred the relationship of landlord and tenant. In the Written Statement as originally filed, there is no specific denial of this fact. According to the learned advocate this denial comes for the first time in this amendment, and therefore, clearly there is a retraction of an admission of the relationship of landlord and tenant.

3 The second ground on which the order is assailed is that the amendment is not bonafide.

4 On going through the impugned order as well as the schedule of amendment, I do not find any merit in these contentions. One must not lose sight of the fact that this is an amendment to the Written Statement and not to the plaint. The defendant is always entitled to take inconsistent pleas in the Written Statement. I do not find that the amendment has any

effect of retracting any alleged admission made by the defendant earlier. The amendment, to my mind, only seeks to amplify that has already been set earlier and also raises a legal issue. At the stage of amendment, the Court is not concerned with the merits thereof.

5 I, therefore, do not find any perversity in the impugned order which allowed the amendment that was sought for by the defendant. This Writ Petition is, therefore, dismissed. However, there shall be no order as to costs. All contentions on merits of the amendment are specifically kept open.

(B.P.COLABAWALLA,J.)