

Sequeira

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

***WRIT PETITION NO. 3506 OF 1994
Along with
CIVIL APPLICATION NO. 459 OF 2017***

Shewa Udyog & anr.

.. Petitioners

Vs

M/s Restrite Engineering Company
Pvt. Ltd. & ors.

.. Respondents

Mr.Muralidharan U.C. i/b Joy Legal Consultants, for the Petitioner
No.2A / Applicants.

None for Respondents.

***Coram : N.M.Jamdar, J.
Date : 16 March 2017.***

Oral Order :

Not on board. Taken on production board by way of
praecipe.

2. Production of the matter was taken on the ground that
the suit which is of the year 1985 has remained pending due to the
pendency of this Writ Petition of the year 1994.

3. The Petitioner has challenged the order passed by the
Appellate Bench of the Small Causes Court, Mumbai dated 28 April
1994, granting leave to the Respondents to amend the plaint.

4. The Respondents have filed RAD Suit No.4777 of 1985 for a declaration that they are tenants of the suit premises and for injunction. In this suit an amendment was sought to include premises on the ground floor which has been granted by the impugned order.

5. Heard learned counsel for the Petitioner. The learned counsel for the Petitioner submitted that there is no reference at all in the plaint to the ground floor and such amendment ought not to have been granted.

6. The amendment has been granted in the year 1994. Rule was issued in this Petition on 14 September 1994. The Petition was once dismissed for non-prosecution in the year 2012 and thereafter restored. The perusal of the farhad sheet does not indicate any interim order. In fact while dismissing the Petition for non-prosecution Court had observed that the controversy may not survive due to passage of time. I am therefore of the opinion that if all contentions and rights of the Petitioner regarding the amendment are kept open the Writ Petition No.3506 of 1994, which is pending since year 1994 can be disposed of. This course of action will cause no prejudice to either of the parties. If the suit is not already been disposed of, the Petitioner will be entitled to advance all such contentions in respect of the amendment which are available to the

Petitioner and the ones made in this Writ Petition, at the time of hearing of the suit. If the Respondents seek any injunction on the basis of amended portion it will be open to the Petitioner to contest the same on merits. It will be also open to the Petitioner to file an additional Written statement, if not already filed. Keeping all contentions of the parties open, the Writ Petition is disposed of.

7. In view of the above, the Civil Application also stands disposed accordingly.

(N.M.Jamdar, J.)