

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

**WRIT PETITION NO.8517 OF 2016**

John Kamati

.... Petitioner

versus

Vimal D. Koli & Ors.

... Respondents

.....

- Mr.Khan Javed Akhtar, for the Petitioner.
- Mrs.Radhika Samant i/b. Mr.Pradeep Harnur, for the Respondent  
Nos.2 to 5, 7 to 9.

**CORAM : R.M.SAVANT, J.**

**DATE : 05<sup>th</sup> APRIL, 2017.**

**P.C. :**

1. The writ jurisdiction of this Court is invoked against the order dated 02/04/2016 passed by the learned Judge of the Small Causes Court, Mumbai. By the said Order the application Ex.40 filed by the plaintiff for amendment/correction of the description of the suit premises, in so far as the number of the suit property is concerned, came to be allowed.

2. The suit property has been described in the plaint as (1B/738). No doubt the evidence and the affidavit of evidence filed

on behalf of the Plaintiff is based on the said description. However, in his cross examination the Plaintiff has mentioned the number of the suit property as 1B-73B, when he was asked the question as to whether the number of the suit premises is 173B. It is also required to be noted that in the assessment bill, which is at Ex.28, the description of the suit property is (1B/73B). The Plaintiff had therefore sought correction of the description of the suit property, in so far as number is concerned, from “1B/738” to “1B/73B”. The said amendment/correction was sought on the basis that on the account of a typographical mistake an error as crept in the description of the suit property in the plaint. The trial Court has deemed it appropriate to accept the justification given by the Plaintiff and by the impugned order dated 02/04/2016, has allowed the said application.

3. The learned counsel appearing on behalf of the Petitioner, original Defendant, Mr. Khan Javed Akhtar, would contend that having filed the plaint on the basis of description bearing No.1B/738 and also having led evidence on the said basis, the Plaintiff cannot now be allowed to correct the description of the suit property, in so far as the amendment/correction of the number is concerned. The learned counsel would contend that having regard to the time lag

between the filing of the suit and filing of the application, the amendment sought was obviously belated. In my view, it is not possible to accept the contentions urged by Mr.Akhtar. Since the trial Court has deemed it appropriate to exercise discretion in favour of the Plaintiff in the matter of correcting the description of the suit property as regards its number; this Court does not deem it appropriate to interfere with the impugned order.

4. It is well settled that delay cannot be the only consideration which would weigh with the Court vide adjudicating upon an application for amendment. In my view, therefore no case for interference is made out. The Writ Petition is accordingly dismissed. The Petitioner, i.e. the original Defendant would be entitled to file additional written statement if so advised. The same can be done as per the directions that would be issued by the trial Court.

**(R.M.SAVANT, J.)**