

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

WRIT PETITION NO. 9569 OF 2017

Mohammad Rafique Abbas Shaikh	...Petitioner
<i>Versus</i>	
Miss Naseem Abbas Shaikh And Ors.	...Respondents

M.Amey Deshpande for the Petitioner.

None present for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 29th AUGUST 2017

P.C.

1. Heard Mr.Deshpande for the petitioner.

2. Upon due consideration of Mr.Deshpande's contention and upon due consideration of the material on record, there is no case made out to interfere with the impugned order by which the Appellate Court has declined leave to the petitioner to amend his written statement and raise a counter claim during the pendency of Appeal against judgment and decree dated 30th January 2013.

3. The petitioner was the original defendant No.3 in Civil Suit No.464 of 2010 which was instituted by the respondent Nos.1

to 5 herein. In the said Civil Suit the plaintiff No.1 had applied for a declaration that respondent No.1 is the tenant in respect of the suit premises. The petitioner, in defense, had stated that neither the respondent No.1 nor the petitioner is a tenant in respect of the suit premises, since, the tenancy had already been relinquished by the original tenant i.e. Sujat B. Abas Shaikh to the landlords.

4. The learned Trial Judge did not find favour with such a defense and therefore, declared the respondent No.1 as a tenant in respect of the suit premises vide judgment and decree dated 30th January 2013.

5. The petitioner instituted a Appeal No.231 of 2013 before the Appellate Court on 15th March 2013. Thereafter, on 08th March 2016 i.e. after almost three years, the petitioner, applied for leave to amend his original written statement and to raise a counter claim that he too is a tenant in respect of the suit premises.

6. The learned Trial Judge upon due consideration of the material on record has declined to grant leave to amend. In this case, there is obviously, the issue of contradictions as well as limitation. Further, even the conduct of the petitioner is not such as

would entitle the petitioner to have any discretion any reliefs. There is nothing stated in the Civil Application as to what prevented the petitioner from raising such a defense in the first instance or even raising the counter claim in the first instance. This is not merely a case of commencement of Trial in the suit but this is a case where the suit itself has been disposed of and leave to amend is applied for almost three years after institution of the appeal.

7. There is neither any jurisdictional error nor any unreasonablity in the making of the impugned order. Accordingly, petition is dismissed. There shall be however no order as to costs.

8. It is however, clarified that the observations in this order are only for the purposes of deciding as to whether any case has been made out to exercise extra ordinary jurisdiction under Article 227 of the Constitution of India. Accordingly, the learned Appeal Judge need not be influenced by the observations in this order while disposing of the petitioner's appeal on merits and in accordance with law.

(M. S. SONAK, J.)