

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11032 OF 2016

The Union of India, through Director General of Post & Telegraph & Ors ...Petitioners

Versus

Madanlal Dalmia & Ors ...Respondents

Mr SR Rajguru, with PS Gujar, for the Petitioners.

CORAM: G.S. PATEL, J
DATED: 8th November 2017

PC:-

1. The Union of India through its Director General of Post & Telegraph says that the Appellate Bench of the Court of Small Causes at Mumbai was grievously in error in allowing an amendment application filed by the plaintiffs. The suit was originally brought under Section 41 of the Presidency Small Causes Court Act on the footing that the Maharashtra Rent Control Act 1999 did not apply to the defendant, the Union of India. The plaintiffs then moved an application for amendment. This was dismissed on 15th December 2008 and the plaintiffs then filed their second application below Exhibit 28 for amendment but on the same grounds. This was allowed. The Union of India moved the Appellate Bench in revision against the order allowing the amendment.

2. It is urged firstly that the amendment change the entire cause of action and substituted the plaint with a new one. Apart from anything else this is incorrect. What the amendment did was to bring the suit within the jurisdictional framework and nothing more. More importantly it is extremely difficult to see how that revision application was even maintainable. As the Appellate Bench said, the order allowing the amendment was not amenable to revision. Had the amendment application been rejected then matters might have been different and revision might have been possible at the instance of the unsuccessful plaintiff. But an order allowing the amendment in such a scenario is not one that determines the rights of the parties. It is entirely procedural. No contentions have been adjudicated. No rights have been determined and all rights are obviously at large. The petitioners will undoubtedly be entitled to file a supplementary written statement to deal with the amendment, if not already done.

3. It is not possible to find fault with the impugned order. The writ petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J)