

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3729 OF 2017

(M/S. BHARAT TRAVELLERS ...VS..SMT. SUMITRABAI VINAYAKRAO BUTY)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.P.Kothari, Advocate for Petitioner.
Shri R.M.Sharma, Advocate for Respondent.

CORAM : S.C.GUPTA, J.
DATED : SEPTEMBER 04, 2017.

P.C.

Heard learned counsel for the parties.

2. This writ petition challenges an order passed by Small Causes Court at Nagpur on an application for amendment. The respondent to the present petition was original plaintiff before the trial Court, who had filed the present suit against the petitioner (original defendant) for eviction, on the ground of arrears of rent and her bonafide needs. The suit property was described in the plaint as a plot owned by the plaintiff, having various structures in certain portions and the defendant was occupying one particular portion of the plot which along with the portions occupied by other tenants admeasured about 36000 sq.ft.; the plot was described in the municipal records as Municipal Corporation House No. 71, Ward No. 65, Residency Road, Sadar, Nagpur.

3. The defendant in its written statement has taken up a position that the plot of land was an open plot of land, though the defendant has not specifically denied that there were various structures on the plot of land admeasuring 36000 square feet.

4. The defendant took out an application in the suit under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint on the ground that the premises defined under Section 7(9) of the Maharashtra Rent Control Act, 1999 meant 'any building or part of a building or garden, ground etc. appurtenant to this building' and that an open plot of land would not come within this definition and no proceedings concerning such plot would be maintainable before the Small Causes Court under Section 15 or 16 of the Maharashtra Rent Control Act, 1999.

5. At that stage, the plaintiff filed the present application for amendment, seeking to add the words “along with structure”, in the description of the suit premises both in the body of the plaint and in the schedule annexed to the plaint. It is the case of the plaintiff that this omission was due to a typing mistake in the original plaint. The trial Court accepted this case and allowed the amendment. That order is challenged in the present petition.

6. Learned counsel for the petitioner (original defendant) relies on a judgment of Calcutta High Court in the case of *Zohra Khatoon vs. Mohd. Jane Alam*, reported in **AIR 1978 Calcutta 133** in support of his case that where the Court inherently lacks jurisdiction to entertain the suit, it cannot make any order for amendment so as to bring the suit within its jurisdiction.

7. The whole basis of the defendant's opposition to the amendment application and in fact, in support of its case for rejection of plaint under Order 7 Rule 11(d) of the Code, is that the plaint, on the face of it, shows that the suit is not

maintainable under the provisions of the Maharashtra Rent Control Act under which it is purportedly filed. It is submitted that an open plot of land cannot be termed as 'premises' so as to bring the suit for eviction in respect of such plot of land within the jurisdiction of the Small Causes Court under Sections 15 and 16 of the Maharashtra Rent Control Act. On the face of it, however, the plaint does not indicate that the suit premises, which is said to be tenanted by the defendant, is an open plot of land, though the averments made in this behalf in the plaint are somewhat vague. In the very opening portion of the plaint, while describing the suit property, the following words are used:

“On the said plot owned by the plaintiff there are various structures in certain portions and defendant is occupying a portion of the said plot (which ?) admeasures about 36,000 square feet along with other Firms of defendant's family.” (sic.)

Though vague, this statement cannot be said to mean that the plaintiff has come to the Court with a specific case that the suit premises consists of an open plot of land. In fact, even the defendant does not suggest that in its application under Order 7 Rule 11(d) of the Code. The defendant, in its application (paragraph 4), in terms, submits that *“....the notice issued by the plaintiff and the plaint are silent as regards the type of premises given on rent to the Defendant.”* and further *“it is no where mentioned in the entire plaint that whether the premises given on rent to the present Defendant are constructed premises or open piece of land or a temporary structure.”* It is one thing to say that the plaint does not take up a definite position on the nature of the premises, whether an open plot or constructed premises or temporary structure, and quite another to say that the

plaintiff has come to the Court with a specific case that the suit premises consists of an open plot of land.

8. The plaintiff merely wants to rid the plaint of this vagueness by incorporating a specific averment in the description that the suit premises consists of a plot of land with structure. In the premises, there is no infirmity in the impugned order allowing the amendment.

9. In the case of *Zohra Khatoon* decided by Calcutta High Court, the Court was of the view that it inherently lacked jurisdiction to entertain the suit. The suit was in respect of lands which fell outside the territorial jurisdiction of the Court. The Court was of the view that granting of an amendment, which would have permitted the plaintiff to delete various prayers in the plaint so as to bring the suit within the jurisdiction of the Court, would be impermissible, since granting of such amendment postulates an authority in the Court to entertain the suit, in the first place. It is not necessary for me to express any opinion on the propositions laid down by Calcutta High Court in that case. Suffice it to say, for the purposes of the present application, that there is no such case here. Here, as we have noted above, from the description of the suit property in the plaint, it could not be said that the Court inherently lacked jurisdiction to entertain the suit. At best, the description of the suit property in the plaint could be said to be vague and it was precisely to do away with this vagueness that the amendment was sought to be introduced and therefore, rightly allowed by the Court.

10. Even otherwise, a suit for eviction for arrears of rent in a case, which is not covered by the provisions of the Rent Control Act, would, under the provisions of the Transfer

of Property Act, lie before the same Court, though on a different basis, that is to say, under Section 106 of the Transfer of Property Act and not under Sections 15 and 16 of the Maharashtra Rent Control Act. Even on that reasoning, it cannot be said that the Court inherently lacks jurisdiction to entertain the suit.

11. Learned counsel for the petitioner (original defendant) submits that the amendment takes away his client's right to have the plaintiff non-suited on account of the suit premises falling outside the definition of "premises" under Section 7(9) of the Maharashtra Rent Control Act. I am afraid learned counsel is not right even there. Whether the suit premises consists of an open plot, as suggested by the defendant, or is land appurtenant to the structure, as claimed by the plaintiff, is a matter of merit to be decided in the suit. If the defendant is right in its defence that the suit premises is nothing but an open plot of land, the plaintiff would be non-suited on his case of eviction under Sections 15 and 16 of the Maharashtra Rent Control Act and possibly also, on his case for eviction under Section 106 of the Transfer of Property Act, though this Court need not express its final opinion on that question.

12. Looked at in any manner, the impugned order passed by the trial Court cannot be faulted as either lacking in jurisdiction or involving a patent illegality in the exercise of such jurisdiction.

13. Lastly, it is contended by learned counsel for the petitioner that the trial Court had to first consider the defendant's application under Order 7 Rule 11(d) of the Code

or at any rate, simultaneously with the plaintiff's application for amendment under Order 6 Rule 17 of the Code. Even that is not correct. As held by our Court in the case of *Pramod vs. Shantaram*, reported in **2017(3) Mh.L.J. 223**, whenever an application for amendment is filed in the face of an application by the opponent for rejection of the plaint, the former application would have to be considered first on its merits before considering the application for rejection of the plaint. Learned counsel submits that unlike the present case the case of *Pramod Konge* (supra) was under Order 7 Rule 11(a) of the Code and not under Order 7 Rule 11(d) of the Code. That makes no difference. Whether the application is filed under Rule 11(a) or under Rule 11(d) of Rule 7 of the Code, same principles would apply. It would not be procedurally correct to decide the application for rejection of the plaint first, since even if the defendant were right and the plaint were to be rejected, it would still be permissible for the plaintiff to file a fresh suit including the subject matter of the proposed amendment within it and no practical purpose would be served in having the defendant's application heard first and then relegating the plaintiff to file a fresh suit with amended plaint.

14. In the premises, there is no merit in the writ petition. The writ petition is **dismissed**. There will, however, be no order as to costs.

JUDGE