

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14386 OF 2017

SHIVPRASAD GANGARAM AGRAWAL
VERSUS
SURESHCHANDRA PREMCHAND RATHOR AND ANOTHER

...
Advocate for Petitioner : Shri Londhe Shashikant S.
Advocate for Respondents 1 & 2 : Shri Gangakhedkar S.S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 19, 2018
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PER COURT :-

1. By an order dated 13.12.2017 this Court (Coram : V.K.Jadhav, J.) had noted the submissions of the petitioner in it's order, which reads as under:-

" *Heard.*

2. *The learned counsel for petitioner / original defendant submits that by way of filing application Exhibit 27, the petitioner sought to amend the written statement to the effect that the order passed by Rent Controller in the eviction proceedings bearing No.1982/RCO/10 dated 30th June, 1987, would operate as res judicata in the instant suit. However, the trial Court has rejected the said application on the ground that the petitioner / defendant though having knowledge about the said proceedings, belatedly filed the application seeking amendment after the trial has been commenced. The learned counsel submits that though the issues*

have been framed, the trial in its strict sense has not been commenced. Further the petitioner / defendant has given all the details of the earlier proceedings in the written statement, however, failed to incorporate in the pleadings about the application of the principle of res judicata.

3. *In view of the above, issue notice to the respondents, returnable on 24th January, 2018.*

4. *Till the next date of hearing, the trial Court shall not proceed with the trial of the suit."*

2. I have heard the submissions of the learned Advocates for the respective sides. I had perused the proposed amendment, which is below paragraph No.3 of Exhibit 27. I find that the petitioner / defendant proposes to include a legal submission in his Written Statement that there was already a proceeding conducted before the Rent Controller and all issues set out in the suit have already been adjudicated upon by the Rent Controller and the said conclusion would affect the plaintiff under Section 11 of the Code of Civil Procedure.

3. The plaintiff has stepped into the witness box and has filed his affidavit in lieu of examination-in-chief.

4. Since I find that the proposed amendment is actually a legal submission and which can be put to the plaintiff in his cross-

examination, I do not find that the impugned order refusing the leave to amend the written statement could be termed as being perverse or erroneous.

5. This petition being devoid of merits is, therefore, dismissed.

6. The learned Court dealing with RCS No.89 of 2015, would be at liberty to refuse adjournments to the litigating sides, if they are based on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE, J.)

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akl/d