

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

WRIT PETITION NO.178 OF 2018.

Orient Jewels

.. Petitioner

Vs.

Smt. Krishna W/o Hansraj Khatau & Ors.

.. Respondents

...

Mr. Javed A. Khan for Petitioner.

Ms. E.A. Gonsalves for Respondents.

...

***CORAM : G.S. KULKARNI, J.
DATE : 9th JANUARY, 2018.***

P.C. :

1. Heard learned counsel for the petitioner – tenant and learned counsel for the respondent-landlord. The challenge in this petition is to an order dated 20th December 2017 passed by the learned judge of the Small Causes Court at Bombay whereby the application filed by the petitioner-tenant below Exh.79 seeking permission of the court to file additional evidence by way of affidavit alongwith additional documents, has been rejected. The principal reason for which the application has been rejected is that the petitioner voluntarily had closed the evidence about three months prior to the passing of the impugned order and at that point of time petitioner had nowhere expressed that he has any additional documents. The learned Trial judge has observed that though the application was filed, the documents were not made available for perusal of the Court.

2. Learned counsel for the petitioner in assailing the impugned order submitted that in the application in question the petitioner had made out an appropriate case that at the time when the evidence on behalf of the petitioner was closed, these documents were not available. It is submitted that there are sufficient averments made in the application that the petitioner was not having the documents at the relevant time and was trying to locate the documents. It is further submitted that in relation to paragraph 7(b) of the plaint, these documents, which are in the nature of the Gumastha licence, electricity bill, inspection report dated 05.07.2008 issued by the licence department, so also MTNL telephone bills of the suit premises for the relevant period which are not only relevant but crucial to meet the case of the respondent-plaintiff, when the respondent-plaintiff alleges that the petitioner tenant was not in use of the suit premises six months prior to the date of the suit. It is submitted that an opportunity was required to be granted to the petitioner to place the said documents on record, if the court was of the opinion that the documents were required to be perused. It is submitted that the suit is at the stage of trial and no prejudice would be caused to the petitioner if the documents are permitted to place on record as evidence on behalf of the petitioner-defendant.

3. On the other hand learned counsel for the respondent has opposed this application. Learned counsel for the respondent has supported the impugned order. It is submitted that the petitioner is delaying the proceedings of the suit. It is also

submitted that the documents sought to be produced as additional evidence are completely irrelevant for the cause in the suit.

4. Having heard the learned counsel for the parties, in my opinion it would be in the interest of the justice that the additional evidence sought to be produced on behalf of the petitioner-defendant by the application in question, be permitted to be taken on record, so as to determine the real questions in controversy between the parties. It is not a case that there is no foundation which is led in the Written statement to defend the case of the plaintiff on the ground of non user of the premises. If it is the contention of the petitioner-defendant that these documents would support the petitioner-defendant in resisting the suit on the grounds raised in paragraph 7(b) of the plaint and the said documents may accord a good defence to the petitioner-defendant. If this be the position, then it would be appropriate and in the interest of justice to grant an opportunity to the petitioner to place such evidence on record. In any event, it has to be borne in mind that by not placing such evidence on record at an earlier occasion, the petitioner-tenant could not have gained anything. To discard such evidence only on the ground that it would delay the trial cannot be an argument to disallow consideration of such evidence.

5. Further, if these documents were not placed on record by the petitioner for the Court to be satisfied whether the application is a bonafide application, then at least an opportunity ought to have been granted to the petitioner-defendant to produce

the said documents for the perusal of the court. Even this is not done.

6. Thus, in the above circumstances, at this stage of the proceeding, the interest of justice would require that the application as made by the petitioner defendant below Exh.79 be allowed, and the petitioner-tenant be permitted to place on record by way of evidence the additional documents as set out in the list of documents which is now on the record of the trial court. It may be observed that all contentions of respondent landlord on the fresh evidence are expressly kept are to be asserted in the further proceedings of the suit. As the petitioner had voluntarily closed the evidence and that the application of the petitioner was also to some extent faulty and that there were some lapses in producing the documents before the court, such opportunity cannot be granted unconditionally. The application of the petitioner defendant below Exh.79 is granted, however, subject to payment of cost of Rs.50,000/- to be paid by the petitioner defendant to the respondent landlord within a period of two weeks from today. It is made clear that if the amount of Rs.50,000/- is not paid as directed the benefit of this order shall not be available to the petitioner-defendant. Accordingly, the order dated 20/12/2017 is set aside.

7. The petition stands allowed however, in the above terms.

(G. S. KULKARNI, J.)