

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3552 OF 2018

Abhishek Vasant Chavan

...Petitioner

Versus

The Life Insurance Corporation Of India

...Respondent

....

Mr. E.A. Sasi, Advocate for the Petitioner.

Mr. Srinivas Bhavé a/w. Gaurav Yadav i/b. Bhavé & Co. for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 02nd JULY, 2018

P.C.

1. Heard Mr. E.A. Sasi, learned counsel for the petitioner and Mr. Srinivas Bhavé, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 4.12.2015 passed by the learned Judge, Court Room No.22 of the Small Causes Court at Mumbai below Exhibit-21 in R.A.D. Suit No.660/2012. By that order, the learned trial Judge rejected the application made by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the plaint.

3. Rule. Mr. Bhawe waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. In support of this Petition, Mr. Sasi invited my attention to paragraphs-3 and 5 of the plaint. In paragraph-3, the plaintiff asserted that his maternal grand-father Dashrat Narayan Patade was the original tenant and was in use, occupation and possession of the suit premises for several decades. In paragraph-5, the plaintiff asserted that his mother late Shobha Vasant Chavan was the only heir and legal representative of Dashrat Narayan Patade. He submitted that on behalf of defendant No.1 written statement was filed on 13.8.2012. In paragraph-18, while dealing with paragraph-3 of the plaint, defendant No.1 contended that the original tenancy in respect of the suit premises was in the name of Sitabai Subbarao, who has changed her name to Kausalya Dashrath Patade after her marriage. Subsequently said tenancy was transferred in the name of Kausalya Dashrath Patade.

5. The plaintiff thereafter filed application at Exhibit-21 for amending the plaint. By the proposed amendment, the plaintiff wants replacement and addition of certain lines in paragraph-3 of the plaint.

By the proposed amendment, the plaintiff has contended that prior to Dasharat Narayan Patade becoming a tenant in respect of the suit premises, the plaintiff's grand-mother Sitabai S. Rao @ Kausalya D. Patade was the original tenant. He has referred to the rent receipts dated 20.5.1958 and 20.7.1958 in order to substantiate said contention. He, therefore, submitted that by the proposed amendment, the nature of the suit is not changed. In any case allowing the application for amendment does not mean that the plaintiff has proved the case set up in the amendment and it is a matter of evidence. He, therefore, submitted that the learned trial Judge was not justified in rejecting the application.

6. On the other hand, Mr. Bhave supported the impugned order. He submitted that in the suit instituted on 21.9.2011 the plaintiff came with the case that his maternal grand-father Dasharat Narayan Patade was the original tenant. Defendant No.1 filed written statement on 13.8.2012 and in paragraph-18 it was set out that Kausalya D. Patade was tenant in respect of the suit premises. Present application for amendment is taken out on 1.11.2014 only to get benefit of decision of Apex Court in **Dr. Suhas H. Pophale v. Oriental Insurance Company Ltd., (2014) 4 SCC 657**. He submitted that the learned trial Judge rightly observed that if the amendment is allowed the right accrued in

favour of defendant No.1 under the Public Premises(Eviction of Unauthorized Occupants) Act,1971 would be taken away. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, in paragraph-3 of the plaint, the plaintiff specifically asserted that his maternal grand-father Dasharat Narayan Patade was the original tenant and his mother Shobha Vasant Chavan, since deceased, was the only heir and legal representative of the deceased Dasharat Narayan Patade. A perusal of paragraph-18 of the written statement shows that defendant No.1 came with the case that the tenancy in respect of the suit premises was in the name of Sitabai Subbarao, who changed her name to Kausalya Dashrath Patade after marriage and the tenancy was transferred in the name of Dasharat Narayan Patade in the year 1997 after death of Kausalya Dashrath Patade. A perusal of the proposed amendment shows that the plaintiff has referred to various receipts issued between May, 1958 and July, 1958 in the name of Sitabai Subbarao @ Kausalya Dashrath Patade. Even defendant No.1 admits that Kausalya Dashrath Patade was the tenant. In view thereof, I find that the learned trial Judge was not justified in rejecting the application. In any case by allowing the

amendment that by itself does not amount to plaintiff having established his case. The plaintiff will have to adduce evidence to substantiate the case made out by him. In my opinion, the proposed amendment does not change the nature of the suit. Insofar as the stage of the suit is concerned, it is common ground that the issues are not yet framed and the plaintiff has not yet filed affidavit of evidence.

8. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. Accordingly, the impugned order dated 4.12.2015 passed by the learned Judge, Court Room No.22 of the Small Causes Court at Mumbai below Exhibit-21 in R.A.D. Suit No.660/2012 is quashed and set aside. Application Exhibit-21 stands allowed. The plaintiff shall carry out amendment within 14 days from today and shall serve amended slip on the other side within the same period. The defendants are at liberty to file additional written statement restricting to amended plaint within four weeks from service of the amended slips. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)