

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6579 OF 2018

Abdul Hamid Macchiwalla and another ... Petitioners
Vs.
Cyrus Phiroze Shroff and others ... Respondents

Mr. Raj Patel a/w. Mr. Abhishek Sawant i/b. Mulani & Co. for Petitioners.
Mr. Mahendra Ghelani i/b. Mr. Nishant S. Vyas for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 10, 2018

P.C. :

Not on Board. At the request of Mr. Patel, taken up for admission.

2. Heard Mr. Patel, learned Counsel for the petitioners and Mr. Ghelani, learned Counsel for respondents No.1 and 2 at length.

3. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.1 and 2', have challenged the judgment and decree dated 05.12.2017 passed by the learned Judge, Court Room No.8 of the Court of Small Causes at Mumbai below exhibit-18 in R.A.E. & R. Suit No.373/650 of 2009 as also the judgment and order dated 03.04.2018 passed by the Appellate Bench of the Small Causes Court in Revision Application No.75 of 2018. By that order, the Courts below rejected the application made by the defendants No.1 and 2 under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the written statement.

4. In support of this Petition, Mr. Patel invited my attention to the -
(i) paragraph 5 of the plaint, (ii) written statement filed by the original defendant on 24.07.2009, (iii) application at exhibit-18 as also (iii) the Schedule of proposed amendment. In particular, he invited my attention to paragraph 8 of the Schedule of proposed amendment where it is

submitted that even though residential flats were available for residence, the plaintiffs did not avail of those flats for residence and have wrongfully claimed possession of the suit premises on the alleged ground of requirement. Had there been genuine, honest and bonafide need, the plaintiffs would not have converted those flats into non residential use and would have used the same for residential use. He submitted that basically, the plaintiffs have filed Suit on the ground of reasonable and bona fide requirement of plaintiff No.1 and his family members. As the plaintiffs have converted several residential premises into commercial premises, the need pleaded by the plaintiffs is neither reasonable nor bonafide. Unless the amendment proposed is brought on record, defendants will not be in a position to adduce evidence. It is, therefore, necessary to allow the application for amendment.

5. On the other hand, Mr. Ghelani invited my attention to paragraph 7 of the written statement and submitted that in paragraph 7, original defendant has contended that plaintiffs have converted 7 residential flats and 3 garages into commercial premises, and thus, the proposed amendment is not necessary for deciding the controversy between the parties and the Courts below were fully justified in rejecting the application.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the trial Court's order shows that the learned trial Judge observed that by way of proposed amendment, defendants want to bring on record that there was a lease agreement between Collector of Bombay and the plaintiffs. Under the said agreement, it was not permissible for the plaintiffs to change user of the land from residential to non-residential. The trial Court observed that the Suit is between landlord and tenant and if the plaintiffs have committed breach of any clause of agreement of lease, it is open for the Collector of Bombay to

proceed against the plaintiffs. In paragraph 10, the learned trial Judge also referred to the written statements where defendants asserted that plaintiffs have converted 7 residential flats and 3 garages into commercial premises / shops. Thus, defendants had knowledge about conversion of 7 residential flats into commercial premises. The learned trial Judge also noted that the defendants have not satisfied the condition in proviso to Order VI, Rule 17 of C.P.C. and accordingly rejected the application.

7. In so far as the order of the Appellate Court is concerned, in paragraph 14, the Appellate Court observed that the proposed amendment is not necessary for deciding the controversy raised between the parties. Application for amendment is nothing but an attempt on the part of the defendants to prolong the matter.

8. In the light of the findings recorded by the Courts below and after perusing the plaint and written statement as also the proposed amendment, I do not find that the Courts below committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

9. Liberty is reserved to the parties to apply for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)