

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9444 OF 2018

Asmita Mogra Co-operative Hsg. Soc. Ltd. and anr. ... Petitioners
Vs.
Ms Mary Cyril Mendonca (deleted) and others ... Respondents

Mr. Asif N. Khatri for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 28, 2018

P.C. :

Not on Board. At the request of Mr. Khatri, learned Counsel for the petitioners, taken up in the production Board.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the order dated 23.07.2018 passed by the learned trial Judge below exhibit-38 in R.A.E.Suit No.830 of 2006. By that order, the learned trial Judge rejected the application filed by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. In support of this Petition, Mr. Khatri invited my attention to paragraph 8 of the application exhibit-38. He submitted that after obtaining duplicate copy of the Reliance Energy Electricity Bill on 15.04.2017, plaintiffs came to know that the suit premises is not in use since 2013. The application exhibit-38 is filed immediately on 21.04.2017. By the impugned order, the learned trial Judge rejected the application. He submitted that defendants have not adduced evidence and no prejudice will be caused to the defendants if the amendment is allowed. If the amendment is not allowed, it will give rise to multiplicity

of the proceedings.

4. I have considered the submissions advanced by Mr. Khatri. I have also perused the material on record. As noted earlier, application exhibit-38 under Order VI, Rule 17 is filed on 21.04.2017. In paragraphs 7 and 8, plaintiffs have averred thus,

“7) I say that after the service of Notice to defendants on 19.12.2012, the defendants have kept the suit premises locked and defendants No.2 and 3 have shifted to their own premises as mentioned below Room No.19, Chawl-E, Sub Plot No.7, Asmita Mogra CHS Ltd., Baptista Wadi, Mogra Village, Jeejamata Road, Andheri (E), Mumbai 400 093 and flat No.2, ground floor, building No.5-B, Asmita Mogra Co-op. Housing Society Ltd. Mogra Village, Jeejamata Road, Andheri (E), Mumbai 400 093.

8) I say that plaintiffs obtained the duplicate copy of Reliance Energy Electricity Bill on 15.04.2017 from Andheri (East) Office and came to know that Electricity connection to the suit premises is not in use since 2013 and the Electricity Meter is in custody of Reliance Energy Ltd. I hereto annexed the copy of duplicate Reliance Energy Ltd. Electricity Bill as Annexure-B.”

5. A perusal of the above paragraphs clearly indicates that in the proposed amendment, plaintiffs have come with the case that after service of notice on defendants on 19.12.2012, defendants have kept the suit premises locked and defendants No.2 and 3 have shifted to the suit premises. In paragraph 8, it is asserted that after obtaining duplicate copy of Reliance Energy Electricity Bill on 15.04.2017 from Andheri (East) office, plaintiffs came to know that electricity connection to the suit premises is not in use since 2013. While rejecting the application, the learned trial Judge observed that plaintiffs' evidence is over and the matter is listed for final arguments. In the plaint originally instituted, the plaintiffs did not invoke ground of non-user of the suit premises by the defendants. As the Suit is at its fag end for final arguments, the learned

trial Judge rejected the application on the ground that fresh issues will have to be framed and the parties will be required to adduce evidence.

6. After perusing the impugned order, I do not find that the learned trial Judge has committed any error in rejecting the application for amending the plaint. Hence, Petition fails and the same is dismissed reserving liberty to the plaintiffs to consider filing Suit invoking ground of non-user, if so advised. It is expressly made clear that where a decree is appealed from by the petitioners, 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.

(R. G. KETKAR, J.)

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