

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12135 OF 2018

Radheshyam C. Badsawal .. Petitioner
vs.
Subhash V. Dubey .. Respondent

Mr. Kunal Bhanage for the Petitioner.
Mr.K.K. Pandey for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 NOVEMBER 2018.

ORAL JUDGMENT :-

1] Heard Mr. Kunal Bhanage for the petitioner and Mr. K.K. Pandey for the respondent.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The petitioner-landlord challenges the order dated 3rd August 2018 by which the learned Trial Court has dismissed the application for amendment of the plaint primarily on the ground that such amendment was applied for after commencement of the trial in the suit and no case was made out by the petitioner that leave for such amendment could not have been applied, despite exercise of due diligence, in earlier.

4] Mr. Kunal Bhanage, the learned counsel for the petitioner, submits that as one of the grounds on which the petitioner has sought for eviction of the respondent was unauthorisedly carrying out alteration and modification to the suit premises, suspecting that during pendency of the proceedings, the respondent has carried out further alterations and modifications, the petitioner applied for an order for inspection of the suit premises on 12th April 2016. Mr. Bhanage points out that such application was granted on 17th September 2016, but the order dated 17th September 2016 was challenged by the respondent before the Revisional Court. The revision was however, dismissed only on 5th April 2017 and the inspection could be carried out on 25th May 2017. On noticing the alterations/modifications to the suit premises in the course of inspection, on 22nd June 2017 application seeking leave to amend the plaint was filed. Mr. Bhanage submits that this is a clear case where the petitioner has acted with due diligence. The facts bear out despite such due diligence, the petitioner could not have applied for leave to amend in earlier. Mr. Bhanage however pointed out that this is not a case of either change of nature of the suit or the amendment if allowed to be carried out will not occasion any prejudice as such to the respondent. Mr. Bhanage submits that in

fact if the amendment is allowed, the same will reduce multiplicity of the proceedings.

5] Mr. K.K. Pandey, the learned counsel for the respondent, submits that the application seeking amendment was barred by delay as also the provisions in the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC). He points out that the trial in the present suit commences in September 2012 and the deposition of DW-1 stands completed. He submits that there is absolutely no jurisdictional error in the impugned order and therefore, this petition ought to be dismissed.

6] The rival contentions now fall for determination.

7] The proviso to Order 6 Rule 17 of CPC, no doubt, provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the the party could not have been raised the matter before the commencement of the trial. In the present matter, it is case of the petitioner -landlord that because he suspected that further alterations/modifications may have been undertaken by the

respondent during pendency of the proceedings, the petitioner applied for an order for inspection of the suit premises. The records bear out such application was resisted by the respondent, but was allowed by the learned Trial Court by order dated 17th September 2016.

8] The inspection could not be taken because the respondent challenged the order dated 17th September 2016 before the Revisional Court. The Revision was ultimately dismissed on 5th April 2017. The inspection could be taken on 25th May 2017. Based upon the inspection, the petitioner has made allegations that the respondent has undertaken further alterations/modifications to the suit premises in the application seeking relief to the amended plaint. At this stage, it is obviously not a question by going into the veracity or otherwise of such allegation.

9] However, the aforesaid facts indeed demonstrated that the petitioner has been diligent in the matter. The facts also demonstrate that inspite of due diligence on part of the petitioner, the petitioner could not have raised the matter of alleged additional alteration/modification to the suit premises before the

commencement of the trial. In these circumstances, there was no justification on the part of the learned Trial Judge to decline the petitioner leave to amend the plaint.

10] In the matter of this nature, the learned Trial Judge ought to have considered the petitioner – landlord had no serious reasons to delay his own suit seeking eviction of the respondent. In any case, such delay would prejudice the petitioner more than it would prejudice the respondent, who continues to be in possession of the suit premises.

11] No doubt, some inconvenience is bound to occasion the respondent. However, such inconvenience will always have been compensated in terms of costs.

12] Since the ground of alteration and modification was already raised in the original plaint, it is not as if this is some case of fundamental change in the structure of the suit. At the highest, this is a case of pleading certain additional facts in support of the original cause of action. The respondent will also have full opportunity to file additional written statement and to contest the

allegation now sought to be introduced by way of amendment.

13] Therefore, upon cumulative consideration of the aforesaid, this petition is liable to be allowed and the same is allowed in the following terms:

(a) The impugned order dated 3rd August 2018 is set aside and the petitioner's application seeking leave to amend (Exhibit-46) is hereby allowed. Necessary amendment to be carried out within two weeks from today;

(b) The petitioner to furnish a copy of the amended plaint to the respondent/attorneys of the respondent within a period of one week from the date of such amendment is carried out. The respondent is granted liberty to file written statement to the amended plaint within a period of four weeks from the date of service of copy of the amended plaint;

(c) The petitioner is directed to pay costs of Rs.10,000/- to the respondent within a period of two weeks from today. In the alternate, the petitioner may deposit the costs before the

learned Trial Court and there shall be a liberty to the respondent to withdraw the same unconditionally;

(d) Rule is made absolute to the aforesaid extent;

14] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)