

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11751 OF 2017

Vinayak Dashrath Tambe
And Anr.

...Petitioners

Versus

Sushil Subhash Khiwansara

...Respondent

....

Mr. Pandit Kasar, Advocate for the Petitioners.

Mr. Shriram S. Kulkarni a/w. Amit Waray a/w. Swapnil Mhatre, Advocate
for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd MARCH, 2018

P.C.

1. Not on board. At the request of Mr.Kasar taken up in the production board.
2. Heard Mr.Pandit Kasar, learned counsel for the petitioners and Mr.Shriram S. Kulkarni, learned counsel for the respondent, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 22.9.2017 passed by the learned District Judge-8, Nashik below Exhibit-16 in Civil Appeal

No.63/2015. By that order, the learned District Judge allowed the application made by respondent, hereinafter referred to as the 'plaintiff', under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending R.C.S. No.289/2009.

4. In support of this Petition, Mr. Kasar strenuously contended that the amendment proposed by the plaintiff was very much available to be agitated in the trial Court. He has taken me through the trial Courts judgment and in particular paragraph-14. He submitted that as the plaintiff did not bring these facts in the trial Court by adducing evidence the learned District Judge was not justified in allowing the application for amendment. He has also invited my attention to the description of the suit property in paragraph-1 which is in possession of the plaintiff and the suit property which is described in paragraph-1B of the plaint.

5. Mr. Kasar submitted that proposed amendment is not bonafide and in fact is not also subsequent development. The ground allegedly pleaded by the plaintiff is not a proper ground. He, therefore, submitted that the Petition requires consideration.

6. On the other hand, Mr. Kulkarni invited my attention to the proposed amendment. By the proposed amendment, the petitioner wanted to insert paragraph-13-A after paragraph-13. In paragraph-13A

the plaintiff has given description of the property in paragraph-1A of the plaint and description of the suit property in paragraph-1B of the plaint. In paragraph-13B, the plaintiff has referred to the notice dated 21.7.2016 issued by the Municipal Corporation of City of Nashik (for short, 'Corporation') calling upon the plaintiff to immediately demolish the property described in paragraph-1B. He, therefore, submitted that the ground is squarely covered by Section 16(1)(k) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). Being the subsequent development, the plaintiff filed application and by the impugned order the learned District Judge has allowed the same.

7. Mr. Kasar relied upon paragraph-33 of the decision of Apex Court in **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others, (2009) 10 SCC 84** to contend that 80% applications under Order VI Rule 17 of C.P.C. are filed with objective of delaying the proceedings, whereas 15% applications are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment.

8. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the plaintiff has instituted suit against the defendants *inter alia* claiming possession on the ground of (a) arrears

of rent as contemplated under Section 15, (b) reasonable and bonafide requirement of suit premises by the plaintiff as contemplated by Section 16(1)(g), (c) erection of permanent construction in the suit premises by the defendants without obtaining previous permission of the plaintiff as contemplated by Section 16(1)(b) of the Act.

9. By order dated 30.12.2014, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred appeal. During pendency of the appeal, he took out application on 16.8.2016 for amending the plaint. As noted earlier in paragraph-13B the plaintiff has specifically referred to the notice dated 21.7.2016 issued by the Corporation asking the plaintiff to demolish the structure described in paragraph-1B as it has become dangerous and unfit for residence of any person. Said ground is *prima facie* covered by Section 16(1)(k) of the Act. Said ground was obviously not available to the plaintiff during pendency of the suit.

10. In the case of **Revajeetu Builders and Developers** (supra), the Apex Court after considering the the provisions of Order VI Rule 17 of C.P.C., has culled out the principles in paragraph-63 as under :

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

11. Applying the tests laid down in aforesaid paragraph-63 to the facts of the present case, in my opinion the amendment was rightly allowed by the learned District Judge. The amendment is necessary for proper and effective adjudication of the ground now sought to be raised under 16(1)(k) of the Act. The application cannot be termed as malafide. The proposed amendment also will not cause prejudice to the defendants inasmuch as the defendants can file amended written

statement dealing with this case. By refusing amendment the plaintiff will be precluded from agitating the ground under Section 16(1)(k) of the Act. The proposed amendment does not constitutionally or fundamentally change the nature and character of the case and the suit essentially continues to be suit for eviction of the defendants. In clause (6), the Apex Court observed that as a general rule, the Court will decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application

12. In the instant case, the plaintiff received notice on 21.7.2016 and the application is made on 16.8.2016. It, therefore, cannot be said that the amendment will be barred by limitation. In the light of this position, no case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed.

13. It is made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in any 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.

14. At this stage, Mr. Kasar orally applies for stay of this order for a period of four weeks from today. Oral application is rejected.

(R. G. KETKAR, J.)