

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11641 OF 2017

Mrs. Grace Jahoshawa Mackwana	...Petitioner
<i>Versus</i>	
Shri. Arvind Dnyaneshwar Nimbalkar	...Respondent

....
Mr.Hussnain Kazi Sayyed a/w. Malik Shah i/b. A.B. Tajane, Advocate for
the Petitioner.

Mr. M.K. Irani, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 26th FEBRUARY, 2018

PC.

1. Heard Mr.Hussnain Kazi Sayyed, learned Counsel for the petitioner and Mr. M.K. Irani, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/appellant/original defendant has challenged the order dated 27.9.2017 passed by the learned District Judge-14, Pune below Exhibit-59 in Civil Appeal No.451/2011. By that order, the learned District Judge rejected the application made by the petitioner under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the written statement.

3. No case is made out for interfering with the impugned order having regard to the (1) assertions made in paragraph-2 of the plaint, (2) assertions made in paragraph-5 of the written statement dealing with paragraph-2 of the plaint, (3) application Exhibit-59 made by the petitioner for amendment of the written statement, and (4) Advocate for the appellant had fully argued the appeal and thereafter Advocate for the respondent had commenced the argument. Mr. Kazi relied upon the order dated 13.1.2010 passed by this Court (Coram:A.S. Oka, J.) in Writ Petition No.5950/2009 to contend that this Court has held that the respondent is not the owner/landlord of the suit premises. After perusing that order, I do not find that the submission made by Mr. Kazi is well founded. *Prima facie* there is no finding recorded in that order. Hence, Petition fails and the same is dismissed.

4. It is made clear that where a decree is challenged by the petitioner, 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 the proceedings as contemplated by section 105(1) of C.P.C.

(R. G. KETKAR, J.)