

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10. WRIT PETITION No. 240 of 2019

1. Chandrashekhar S/o Irappa Hurdale
age 88 years occupation agriculture and business
2. Shivraj S/o Irappa Hurdale,
age 77 years occupation agriculture and business
R/o Almala Taluka Ausa District Latur

Through power of attorney holder
Shivsamb S/o Chandrashekhar Hurdale,
age 62 years occupation business
R/o Almala Taluka Ausa District Latur.

...Petitioners

VERSUS

1. Dwarkabai Wd/o Manikrao Kankal (died)
through legal representatives:
 - 1/1. Jyoti @ Shama Prakash Sulakhe,
age 56 years occupation household
R/o Gandhi Nagar, near Rajasab Hotel,
Osmanabad Taluka and District Osmanabad.
 - 1/2. Manorama W/o Ramesh Sulakhe,
age 52 years occupation household
R/o Kurudwadi road, near Mamasahab Jagdale Hospital,
Barshi Taluka Barshi District Solapur.
2. Pradip S/o Manikrao Kankal,
age 52 years occupation business
3. Deelip S/o Manikrao Kankal,
age 50 years occupation nil
4. Sanjay S/o Manikrao Kankal,
age 44 years occupation business

All R/o Cloth Lane, Latur Taluka and District Latur.

...Respondents

Mr. H.V. Patil, Advocate for Petitioner
Mr. S.S. Rathj, Advocate for respondents No.3 & 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 21st January, 2019

ORDER:

1. Heard the learned counsel for petitioners and respondents.

2. The petitioners are before this court aggrieved by order dated 15th November, 2018 rejecting application-Exhibit 98 filed for amendment of written statement during pendency of rent appeal No. 3 of 2014 preferred against the judgment and decree passed by the trial court directing eviction of petitioners from suit shop on the grounds of bonafide requirement of the suit shop by the landlord and default by tenant in payment of rent.

3. Respondents/plaintiffs had moved the suit bearing rent suit No. 5 of 2010 for eviction of petitioners/defendants on aforesaid two grounds. In the suit, it appears that the written statement had been filed opposing claims under the plaint about petitioners being possessed of sufficient property. Issues had been framed, parties had led evidence, they were heard and the suit has been decreed.

4. In the appeal by petitioners, application Exhibit-98 had been moved by them with a view to have amendment in written statement to buttress the claim that the petitioners are not possessed of the property, as claimed in the plaint with the aid of certain documents, viz; notarized documents meant for memorizing the partition. The same has been rejected by appellate court. Appellate court has observed in paragraphs No. 9, 10 & 11 of impugned order, thus,

“9) In the written statement (Ex.14) and amended written statement (Exh.94), the appellants/tenants have denied that they have any property at Ambajogai road, Latur. But during evidence Shivsamb (DW 1), power of attorney holder of appellants admitted having said property. Thus at that time also appellants/tenants or Shivsamb had an opportunity to carry out present amendment or inform the court that said property is already partitioned. But appellants or Shivsamb (DW 1) did not give any explanation as to why similar application was not made earlier before the learned Trial Court or in this appeal also.

10) Perusal of the present appeal revealed that since 02.08.2016, the appeal is for argument. Adjournment was granted to the appellants on 20.06.2017 subject to costs of Rs. 300/-. Thereafter appellants filed an application (Exh. 73) for appointment of Court Commissioner on 19.07.2017. Order came to be passed on 26.07.2017 that parties should argue the appeal finally on next date alongwith that application. Thereafter the appellants filed application (Exh.79) on 30.11.2017 to send documents (Exhs. 91, 129

and 175) to Handwriting Expert. Said application was rejected on 30.08.2018.

11) The appellants have challenged the order passed on Exh.73 before the Hon'ble High Court by filing Writ Petition No. 11599/2018. Said Writ Petition was disposed off on 17.10.2018 by the Hon'ble High Court with direction to the parties to advance their final submissions in the Appellate Court on the ensuing date without seeking any adjournment. But thereafter also appellants filed adjournment application on 29.10.2018 (Exh.95), which came to be rejected.”

5. In the circumstances, apart from reasons, which have weighed with appellate court, while it is a case of petitioners that they want to amplify their contentions/claim with regard to them not having sufficient properties, rejection of application may not impede canvassing their such case. In the background of the case, discretionary powers would not be exercised in favour of petitioners. The writ petition, therefore, is rejected.

**(SUNIL P. DESHMUKH)
JUDGE.**