

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.48 OF 2019
IN
WRIT PETITION NO.6164 OF 2018

Sultan Suleman Gureshi ...Petitioner
vs.
Anisa Rafiq Charolia and Others ...Respondents

Mr. Manoj Harit I/b. Manoj Harit & Co., for the Petitioner

CORAM : R. G. KETKAR, J.

DATE : AUGUST 02, 2019

P.C.:

. Heard Mr. Manoj Harit, learned counsel for the Petitioner at length.

2. By this Petition under 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 the Petitioner sought review of the order dated 4th February, 2019 passed by this Court in Writ Petition No. 6164 of 2018.

3. By that order, the order dated 2nd April, 2018 passed by the learned trial Judge below Exhibit 51 in R.A.E & R. Suit No. 103/163 of 2004 was modified to the extent of paragraph 25 of the affidavit of examination in chief of witness D.W.1 Sultan Suleman

Qureshi. Paragraph Nos. 2 to 24 and 26 to 36 of the examination in chief of D.W. 1 were ordered to be struck out from the evidence. The Petition was accordingly partly allowed.

4. In support of this Petition, Mr. Harit submitted that Respondent has instituted the suit on two grounds namely unauthorized construction and arrears of rent. He has taken me through paragraph Nos. 25 to 29 and 31 of examination in chief of D.W.1 Sultan Suleman Qureshi. He has also invited my attention to written statement and in particular paragraph Nos. 5 and 6. The Defendant specifically contended in the written statement that refusal on the part of the Plaintiff in accepting the rent was not only intentional but with ulterior motive. He further submitted that in paragraph 8(b) the Defendant specifically contended that Mumbai Municipal Corporation had granted permission to repair on 21st October, 1960. This document establishes legality of the suit premises as it existed then. The Defendant will be precluded from adducing evidence in support of permission dated 21st October, 1960 for carrying out repairs. He therefore submitted that order requested to be reviewed.

5. I have considered the submissions advanced by Mr. Harit. I have also perused the material on record.

6. A perusal of paragraph 9 of the order under review shows that by comparing the written statement filed by the Defendant with the examination in chief, it was held that it clearly showed that the Defendant has deposed the facts which are beyond the pleadings in the written statement. In paragraph 11 the reference was made to section 136 of the Indian Evidence Act, 1872. After comparing the pleadings of the Defendant and the affidavit of evidence tendered by D.W.1, the learned trial Judge directed striking out paragraph Nos. 2 to 35. It was observed that it is settled principle of law that no amount of evidence is admissible which is beyond the pleadings of the parties. After perusing the written statement and the examination in chief of the Defendant, it was observed that the learned trial Judge did not commit any error in holding that contents of paragraphs 2 to 35 excepting paragraph 25 are not in consonance with the pleadings of the Defendant. In so far as the contents of paragraph 25 of the examination in chief of the Defendant are concerned, the same are referable to paragraph 6 of the written statement. Consistent with these

findings the impugned order passed by the learned trial Judge was modified only to the extent of paragraph 25 of the affidavit of examination in chief of D.W. 1.

7. As the order under review was passed after the comparison of written statement and examination in chief of D.W. 1, it is not possible to accept the submissions advanced by the learned counsel appearing for the Petitioner. Even otherwise, this cannot be a ground to review the order. Hence, the Review Petition fails and the same is dismissed.

(R.G. KETKAR, J.)