

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4842 OF 2019

Prayagbai Dattatray Jankar and another                      ...      Petitioners  
Vs.  
Snehaprabha Ashok Achalkar and others                      ...      Respondents

Mr. Sujeet R. Bugade for Petitioners.  
Ms Anjali R. Shiledar Baxi for Respondents No.1 and 2.

**CORAM : R. G. KETKAR, J.**  
**DATE : JUNE 4, 2019**

**P.C. :**

Heard Mr. Bugade, learned Counsel for the petitioners and Ms Baxi, learned Counsel for the respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 20.12.2018 passed by the learned Ad-hoc District Judge-1, Barshi below exhibit-37 in Regular Civil Appeal No.467 of 2014. By that order, the learned District Judge rejected the application made by the petitioners / appellants under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the written statement.

3. The respondents had instituted Regular Civil Suit No.522 of 2012 (Old R.C.S.No.552 of 1999) against Dattatraya Maruti Jankar, predecessor in title of the petitioners for recovery of possession of the suit premises. Initially, the written statement was filed by Dattatraya Maruti Jankar on 04.01.2001. The legal representatives of Dattatraya filed written statement on 20.04.2012. The Suit was decreed on 15.11.2014. Aggrieved by this decision, petitioners preferred Regular Civil Appeal before the learned District Judge. Pending this Appeal, they took out application exhibit-37 for amending the written statement inter

alia on the ground that during the pendency of the appeal, certain subsequent events have taken place. The petitioners contended that on 06.07.2018, Ashok Atul Achalkar, son of respondent No.1 contacted from his mobile No.98204 29649 to petitioner No.2-Arun on his mobile No.70202 23855 at around 6.51 p.m. informing him that petitioners need not file appeal as they intend to sell C.T.S.No.1550/59. Petitioners, therefore, prayed for amending the written statement in terms of paragraph 7 of the application.

4. The plaintiffs opposed that application by filing reply at exhibit-39. By the impugned order, the learned District Judge rejected the application. In paragraph 8, the learned District Judge observed that the petitioners herein did not file cell conversation in the Court or the transcription of the said conversion in words. Mere mentioning that there was telephonic conversation about sell of suit premises by respondents No.1 and 2 is not sufficient.

5. In support of this Petition, Mr. Bugade has reiterated the submissions that were advanced before the learned District Judge. He submitted that the contentions raised in paragraph 7 of the application can be substantiated by adducing evidence. The petitioners are in a position to demonstrate that on 06.07.2018, Ashok Atul Achalkar, son of respondent No.1 contacted from his mobile No.98204 29649 to petitioner No.2-Arun on his mobile No.70202 23855 at around 6.51 p.m. This fact is, therefore, required to be brought on record.

6. As against this, Ms Baxi has tendered itemized calls of mobile No.98204 29649 of Atul Achalkar. The same is taken on record and marked 'X' for identification. She submitted that perusal of the call records of 06.07.2018 would demonstrate that petitioner No.2 never

contacted Ashok on his mobile No.70202 23855. She, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, in paragraph 7 of the application exhibit-37, petitioners contended that during the pendency of appeal, on 06.07.2018, Ashok Atul Achalkar, son of respondent No.1 contacted from his mobile No.98204 29649 to petitioner No.2-Arun on his mobile No.70202 23855 at around 6.51 p.m. informing him that petitioners need not file appeal as they intend to sell C.T.S.No.1550/59. While rejecting the application, the learned District Judge observed in paragraph 8 that petitioners did not produce the cell conversation in the Court or the transcription of the said conversion in words. In order to give opportunity to the parties, by order dated 22.04.2019, petitioners and respondents were directed to produce monthly bill of July, 2018 of their respective mobile numbers. In pursuance thereof, petitioners have not produced call records. As against this, respondents have produce the call records of mobile No.98204 29649. Upon perusing the call records, I am satisfied that the theory propounded by the petitioners in paragraph 7 of the application for amendment is totally false. That apart, for the reasons recorded in paragraph 8 of the impugned order, I do not find that the District Court has committed any error in rejecting the application.

8. Liberty is reserved to the petitioners to file application for expeditious disposal of the standard rent application filed in the trial Court. If such application is made, the learned trial Judge shall pass appropriate order on the said application. Subject to this, Petition fails and the same is dismissed. It is, however, expressly made clear that

where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of proceedings as contemplated by Section 105(1) of C.P.C. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*