

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7704 OF 2019

Syed Jalal Mirai ... Petitioner
Vs.
M/s. Metro House Private Limited ... Respondent

Mr. Kunal Bhanage i/b. Mr. Akshay Pawar for the Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JULY 16, 2019

P.C. :

Heard Mr. Bhanage, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the order dated 27.02.2019 passed by the learned trial Judge below exhibit-79 in R.A.E.&R. Suit No.248/420 of 2002. By that order, the learned trial Judge rejected the application made by the defendant under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the written statement.

3. In support of this Petition, Mr. Bhanage submitted that on 02.06.2016, the entire suit building was damaged on account of fire, that gutted the major portion of the suit building. In pursuance thereof, by letter dated 11.07.2016 written by MHADA authorities and police and B.M.C. Authorities have warned the residents that the building is unsafe to occupy. As the development took place pending the Suit, defendant took out application for amending the written statement so as to bring these facts on record. By the impugned order, the learned trial Judge has rejected the application on the ground that the proposed amendment is not bonafide. The defendant is interested in prolonging the trial of the Suit. He submitted that as this is a subsequent development pending the

Suit, the learned trial Judge ought to have allowed the application. He further submitted that the consideration of the application for amendment of the written statement and the application for amendment of the plaint stand on the different footing. The learned trial Judge ought to have considered application for amendment of the written statement liberally. He, therefore, submitted that the impugned order deserves to be set aside.

4. I have considered the submissions advanced by Mr. Bhanage. I have also perused the material on record. It is not in dispute that the respondent-plaintiff has instituted Suit invoking the ground or arrears of rent under Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). During the pendency of the Suit, plaintiff amended the plaint so as to incorporate the ground of denial of title. It is in that context necessary to find out whether the proposed amendment is necessary for deciding the real controversy between the parties. A perusal of the application for amendment shows that defendant wants to bring on record the fact that on 02.06.2016, the suit building is damaged. In paragraph 15, the learned trial Judge observed that the proposed amendment is not at all necessary for determining the real question in controversy between the parties. The plaintiff has not alleged that the tenancy right of the defendant is extinguished due to breaking out of the fire in the suit premises. For the reasons recorded in paragraph 15 of the impugned order, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, 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 appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)