

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8361 OF 2019

Devilal Mohanlal Bohra @ Jain	...	Petitioner
Vs.		
Chandrakant Lalji Chheda	...	Respondent

Mr. Mayuresh D. Modgi for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 1, 2019

P.C. :

Not on Board. At the request of Mr. Modgi, learned Counsel for the petitioner, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the order dated 26.02.2019 passed by the learned trial Judge below exhibit-23 in Regular Civil Suit No.1134 of 2012. 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. The respondent, hereinafter referred to as 'plaintiff', has instituted Suit against the defendant for recovery of possession of flat No.15 in property bearing Survey No.67A, Hissa No.9 (part) being, lying and situate at Mauje G.B. Patharli, Dombivli (East), Taluka Kalyan, District Thane together with structure standing thereon and the entire property known as 'Chheda Sadan', Shiv Mandir Road, Ramnagar, Dombivli (East), Taluka Kalyan, District Thane within the limits of Kalyan Dombivli Municipal Corporation, more particularly described in paragraph 1 of the plaint, (for short 'suit property') inter alia invoking the

grounds of - (i) reasonable and bonafide requirement and (ii) non-user as contemplated under Section 16(1)(g) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act') respectively. During the pendency of the Suit, defendant took out application exhibit-23 under Order VI, Rule 17 of C.P.C. for incorporating paragraph 10(a) after paragraph 10 in the written statement. In the proposed amendment, defendant has come out with the case that in the month of January, 2018, meeting was convened between the plaintiff landlord and the tenants including the defendant to discuss the major repairs to be carried out to the suit building. The major repairs were described in the quotation dated 23.01.2018 by Shree Samarth Civil Contractor, Dombivli (East). The tenants carried out the repairs with the consent of the landlord. The defendant paid an amount of Rs.10,000/- towards his flat No.16 by cheque No.350761 drawn on Central Bank of India dated 28.02.2018 as his contribution. The other tenants also contributed towards repairs expenses. The defendant further contended that number of meetings of the tenants and landlord were held in the suit premises to discuss the repairs issue earlier to MoU. The defendant further contended that “since plaintiff landlord accepted the amount from the defendant towards suit building repairs, his tenancy remains intact and he cannot be evicted simply because of his conduct. Landlord plaintiff is estopped from claiming eviction decree”.

4. In support of this Petition, Mr. Modgi strenuously contended that in view of the acceptance of the amount from the defendant towards suit building repairs, the plaintiff is estopped from claiming eviction decree. The grounds under Section 16(1)(g) and Section 16(1)(n) are no longer available to the plaintiff for claiming eviction decree. He further submitted that it is settled principle of law that subsequent events can be brought on record by suitably amending the pleadings. In support of this

submission, he relied upon the decision of ***Chanchalben Vs. Municipal Corporation of Greater Mumbai, 2002 (4) Mh.L.J. 382***, and more particularly paragraphs 7 and 8. He, therefore, submitted that Petition requires consideration.

5. I have considered the submissions advanced by Mr. Modgi. I have also perused the material on record. During the course of hearing, Mr. Modgi stated that before instituting the Suit, plaintiff did not issue notice terminating his tenancy. In other words, the contractual tenancy of the defendant continues and is not terminated. Even if it is assumed for the sake of arguments that plaintiff had issued notice terminating defendant's tenancy, nonetheless, he becomes a statutory tenant. His statutory tenancy cannot be terminated by mere issuance of the notice. In short, tenancy of the defendant remains in tact in any case.

6. Merely because the plaintiff has accepted certain amount from the defendant towards suit building repairs, it cannot be said that plaintiff is estopped from claiming the eviction decree. While passing the impugned order, the learned trial Judge noted the contention of the plaintiff that the application is taken out by the defendant only to prolong the matter. The cross-examination of the plaintiff was partly completed and it is at that stage, the application is made. In paragraph 4, the learned trial Judge held that plaintiff has sought eviction on the ground of non-user. Suit premises is room No.15 and the proposed amendment is in respect of room No.16. The contents of the proposed amendment are absolutely not relevant to decide the real controversy between the parties. I do not find that the learned trial Judge has committed any error in holding that proposed amendment is wholly unnecessary to decide the real controversy between the parties. In view thereof, no case is made out for invocation of powers under Article 227

of the Constitution of India. 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.

7. As the cross-examination of the plaintiff is partly completed, the learned trial Judge is requested to dispose of the Suit on or before 31.12.2019. The parties shall extend co-operation for expeditious disposal of the Appeal.

(R. G. KETKAR, J.)

Minal Parab