

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10565 OF 2019

Mr. Anil Raghunath Kumbhar
Since deceased through his legal heir
Smt. Aruna Anil Kumbhar

... **Petitioner.**
(Orig. Defendant.)

Versus

Shri Shivajirao Appaji Patil
Since deceased through his LRS.
1) Dr. Smt. Vijaya Shivajirao Patil and Ors.

... **Respondents.**
(Orig. Plaintiffs)

.....

Mr. Siddharth C. Wakankar for the Petitioner.
Mr. Shekhar Jagtap i/b J. Shekhar & Co. for the Respondents.

.....

CORAM : A. S. GADKARI, J.

DATE : 13th DECEMBER, 2019

P. C. :

1. By the present petition, under article 227 of the Constitution of India, the petitioner has impugned Order dated 3rd April 2019 passed below Exhibit 77 in Regular Civil Suit No. 464 of 2001 by the learned Civil Judge, Junior Division, Islampur, thereby rejecting the said application preferred by the petitioner for amendment of written statement.
2. Heard Mr. Wakankar, learned counsel for the petitioner and Mr. Jagtap, learned counsel for respondents. Perused the record annexed to the petition.
3. The record indicates that, the aforestated Regular Civil Suit

No. 464 of 2001 filed under the provisions of Maharashtra Rent Control Act, 1999 (for short “the said Act”) by the respondent was dismissed by the Trial Court by its Judgment and Order dated 15th April 2009. The respondent preferred Regular Civil Appeal No. 99 of 2009 and the Appellate Court by its Judgment and Order dated 19th December 2017 was pleased to partly allow the said appeal by setting aside the Judgment and Decree passed by the Trial Court and remanded the said suit back for framing of an additional issue and for deciding the suit afresh.

4. The record further indicates that, after remand of the said suit, recording of evidence of both the parties is concluded and final argument in the said suit has commenced. In this background and at such a belated stage, the petitioner filed an application for amendment of his written statement under Order 6 Rule 17 of the Code of Civil Procedure (for short “the Code”) below Exhibit-77 in the said suit. The Trial Court by its impugned Order dated 03rd April 2019 has rejected the said application.

5. Mr. Wakankar, learned counsel for the petitioner submitted that, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely. He further submitted that, amendment in the written statement can be permitted at any stage before pronouncement of

judgment. He relied on the decision of the Supreme Court in the case of *Usha Balashaheb Swami and Ors. Vs. Kiran Appaso Swami and Ors.* reported in (2007) 5 SCC 602 and the decision of the learned Single Judge of this Court in the case of *Maruti Vithoba Kulal and Anr. Vs. Nivrutti Deoram Kulal and Ors.* reported in 2019 (2) Bom.C.R.476. He submitted that, the Trial Court has erroneously relied on the Proviso to Rule 17 of Order 6 of the Code while rejecting his application and therefore the impugned Order may be quashed and set aside by allowing the present Appeal.

6. Per contra, Mr. Jagtap, learned counsel for the respondents vehemently opposed the petition and submitted that, once an admission is given by the defendant in his pleading, the same can not be permitted to be withdrawn by an amendment. However, at the most, an application may be made for explaining or clarifying of the said admission. In support of his contention he relied on the decision of the Hon'ble Supreme Court in the case of *Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria and Ors.* reported in (2015) 10 SCC 2030.

7. Perusal of record would indicate that, the present suit is filed in the year 2001. As noted earlier, the Appellate Court by its Judgment and Order dated 19th December 2017 remanded the said suit back for deciding it afresh. In this background, after the arguments of the plaintiff (respondent herein) are over, the petitioner /original defendant filed the present application below Exhibit-77 for amendment of written statement

on 19th March 2019.

A bare perusal of application would indicate that, it is the intention of the petitioner to nullify the effect to the admissions given by him either in his earlier written statement or during the course of recording of his evidence. It is the settled position of law that, an admission given by a party which is beneficial to other side can not be easily washed away by way of additional pleadings. If the application filed by the petitioner is allowed, undoubtedly, it will result in causing grave injustice and irretrievable prejudice to the respondents/plaintiffs. In view thereof, the decision relied by the learned counsel for the petitioner in the case of *Usha Balashaheb Swami and Ors. Vs. Kiran Appaso Swami and Ors. (Supra)* is of no avail to him. It further clearly appears to this Court that, the petitioner has filed the said application below Exhibit-64 only with a view to procrastinate the litigation which is pending on the file of the Trial Court since the year 2001 and nothing else.

8. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329* has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal

over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

9. The record further indicates that, though the petitioner was having ample opportunity to file an elaborate detail written statement at the inception, but has not done so, and by way of an afterthought he now wants to amend his written statement.

10. Perusal of impugned Order would clearly indicate that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

11. The Petition being de hors of merits is accordingly dismissed *in limine*.

(A. S. GADKARI, J.)