

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.7142 OF 2019

WITH

WRIT PETITION NO.7143 OF 2019

WITH

WRIT PETITION NO.7144 OF 2019

M/s. Samrat General Stores	]	
Through Proprietor;	]	
Nathmal Oswal (since deceased)	]	
through heir;	]	
Jeevan Kapurchand Oswal	]	Petitioner
Vs.		
Ramdas Krishnarao Tulshibaugwale	]	Respondent

.....
Mr. Prathamesh Bhargude, Advocate for the Petitioner in all the Petitions.

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CORAM : R.G. KETKAR, J.

DATE : 9TH JULY, 2019.

P.C.

Heard Mr. Prathamesh Bhargude, learned Counsel for the Petitioner in all the Petitions, at length.

2. Writ Petition No.7142 of 2019 takes exception to the order dated 12th March, 2019 passed by the learned trial Judge below Exhibit 118 in R.C.S. No.502 of 2009. By that order, the learned trial Judge rejected the application made by defendants No.1-A and 1-B praying for inspection of the suit premises by the Court.

3. Writ Petition No.7143 of 2019 takes exception to the order dated 25th April, 2019 passed by the learned trial Judge below Exhibit 123-A (or Exhibit 121) in R.C.S. No.502 of 2009. By that order, the learned trial Judge rejected the application made by defendants No.1-A and 1-B under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for amending the written statement.

4. Writ Petition No.7144 of 2019 takes exception to the order dated 25th April, 2019 passed by the learned trial Judge below Exhibit 123 in R.C.S. No.502 of 2009. By that order, the learned trial Judge rejected the application made by defendants No.1-A and 1-B under Order-XXVI, Rule-9 of the C.P.C for appointment of Commissioner for inspection of the premises which was in occupation of the tenant Mr. Pandya.

5. The respondent/plaintiff has instituted suit against the present petitioner for recovery of possession of Shop admeasuring 15'x12' situate in CTS No.1131, Budhwar Peth, Pune (for short 'suit premises'), *inter alia*, invoking grounds of reasonable and bona fide requirement (section 16 (1) (g)), arrears of rent (section 15) and unlawful subletting (section 16 (1) (e)) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). It is not necessary to set out the facts in detail. Suffice it to note that during pendency of the suit, the plaintiff filed additional affidavit of examination-in-chief dated 30th March, 2019. In paragraph 3 it is stated that;

“3.In an another Civil Appeal No.477/2014 carried out by another tenant Shri Pandya challenging the decree of eviction against him in a suit No.270/2011, a settlement took place in between myself and the other tenant Shri Pandya and I have got the possession of suit premises comprising of around 20ft. X 8ft of built up area situated at the end of the rear inside of the Tulshibaug precinct

which was kept locked and unused by that tenant for more than 10 years. The said premises is so decayed and destroyed and damaged by non user thereof for more than 10 years that the same would be required to be undertaken with major/heavy repairs at one hand and the same is not even bear the burden of such repairs, I apprehend. The said premises is thus not available despite possession for instant commencement of user thereof”.

6. This prompted defendants No.1A and 1B in filing;
 - [1] Application Exhibit 118 praying for inspection;
 - [a] Suit premises;
 - [b] The shop on the Northern side of the suit premises where business is conducted under the name and style as “Senoritas”.
 - [c] The shop on the Southern side of the suit premises where business is conducted under the name and style as “Gift of Gold”.
 - [d] Shop No.1 on the ground floor and the commercial premises on the first floor in the property bearing House No.118 Parvati, Pune known as “Shantideep Society”.
 - [e] The office and godown premises in the property wherein City Survey Nos.1131 and others Budhawar Peth, Pune known as “Tulshibaug” in the occupation of the plaintiff”.
 - [2] Application Exhibit-123-A (or Exhibit 121) under Order-VI, Rule-17 of the C.P.C for amending the written statement by incorporating paragraph 9(c). By incorporating paragraphs 9-C, defendants No.1-A and 1-B intend to contend that the premises of Pandya are in good condition and are situate in

market locality. The premises of Pandya are suitable and adequate which will meet requirement of the plaintiff.

[3] Application Exhibit 123 under Order-XXVI, Rule-9 of the C.P.C for appointment of Commissioner.

By the impugned orders, all these applications were rejected by the trial Court.

7. The Petitions were heard at length on 8th July, 2019 and were kept today for passing orders. In so far as order below Exhibit 123-A rejecting the application made by defendants No.1-A and 1-B for amending the written statement is concerned, in paragraph 7, the learned trial Judge has observed that defendants No.1A and 1B can produce certified copies of the proceedings of Civil Suit No.270 of 2011 and Appeal No.477 of 2014. They can also cross-examine the plaintiff's witness who has filed additional affidavit of evidence.

8. In view thereof, during the course of hearing, it was indicated to Mr. Bhargude that the Court will consider permitting defendants No.1A and 1B for filing application for appointment of Architect/Structural Engineer for bringing on record position of the premises which was earlier in occupation of Mr. Pandya. As the plaintiff had filed additional affidavit of evidence to bring on record condition of the premises which was earlier in occupation of the tenant Mr. Pandya, defendants No.1-A and 1-B should also be given opportunity to bring on record condition of the premises which was in possession of Mr. Pandya.

9. Mr. Bhargude, therefore, sought time to take instructions. Accordingly, matter was adjourned till today. Mr. Bhargude has tendered copy of the e-mail dated 9th July, 2019 sent by Jeevan Oswal, sole Proprietor of

M/s. Samrat General Stores instructing him to withdraw the Petitions and to seek liberty from this Court to file application for appointment of Architect/Structural Engineer for inspection of the premises mentioned in paragraph 3 of the additional affidavit dated 30th March, 2019. The same is taken on record and marked 'X' for identification.

10. In view thereof, on the motion made by Mr. Bhargude, Petitions are allowed to be withdrawn and as such are disposed of with liberty to file application for appointment of Architect/Structural Engineer for inspection of the premises which was earlier occupied by tenant Pandya. The said application shall be allowed. Defendants No.1-A and 1-B are permitted to adduce evidence of the Architect/Structural Engineer for proving the contents of the report submitted by him.

11. Mr. Bhargude assures that on or before 15th July, 2019, the application will be filed. If such application is filed on or before 15th July, 2019, the learned trial Judge shall grant the said application within two weeks therefrom and will proceed with cross-examination of the plaintiff's witness.

12. All the parties including the trial Court to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]