

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO.10550 OF 2017

Ms. Pratibha Ramanlal Seth

...Petitioner

Versus

Shri. Pravin Jhaveri & Anr.

...Respondents

....

Mr. Charanjeet Chanderpal, Advocate for the Petitioner.

Mr. Bharat Joshi, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 10th JUNE, 2019

P.C.

1. Heard Mr. Charanjeet Chanderpal, learned counsel for the petitioner and Mr. Bharat Joshi, learned counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the order dated 21.10.2016 passed by the learned Judge, Court Room No.25 of the Court of Small Causes at Mumbai below Exhibit-16 in R.A.D. Suit No.647/2015. By that order, the learned trial Judge rejected the plaintiff's application for deletion of following statements made by the defendants in paragraph-5 of the written statement, hereinafter referred to as the 'objectionable sentences'.

“The Plaintiffs entry to suit premises was not welcome by deceased tenant for her misadventure in 1995 of eloping, with a stranger and secretly

marrying him. In 1995 Plaintiff left her mother and ran away with her paramour and married him but returned back after 20 days on failed marriage. The deceased tenant for that eloping never kept any relation with the Plaintiff, for her mis-adeventure and she was not even permitted to enter the suit premises till she forcibly entered in October, 2014.”

3. Rule. Mr. Joshi waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing

4. In support of this Petition, Mr.Chanderpal submitted that the plaintiff has instituted suit for declaration that she is the lawful tenant in respect of the premises consisting of 2 Bedroom Hall Kitchen bearing No.2C situate on 3rd floor of Damini Sadan, Girgaum, Mumbai (for short, 'suit premises') and is fully protected by the provisions of the Maharashtra Rent Control Act, 1999 (for short, 'Act') amongst other prayers. The defendants filed written statement in or about July, 2015. In paragraph-5, it was contended thus :

“5. These Defendants state that Plaintiff has unlawfully trespassed and encroached, entered into the suit premises in or about October, 2014, high handedly with the help of another notorious tenant of the suit building and she has no knowledge of any facts prior to it. The sweeping statements made in the Plaint are all hypothetical. The Plaintiff all throughout resided with her mother at Khetwadi and after her mother expired in 2014 she shifted to the suit premises. The Plaintiffs entry to suit premises was not welcome by deceased tenant for

her misadventure in 1995 of eloping, with a stranger and secretly married him. In 1995 Plaintiff left her mother and ran away with her paramour and married him but returned back after 20 days on failed marriage. The deceased tenant for that eloping never kept any relation with the Plaintiff, for her mis-adventure and she was not even permitted to enter the suit premises till she forcibly entered in October, 2014.”

5. Mr. Chanderpal submitted that the portion beginning with the words “The Plaintiffs entry to suit premises ...” and ending with “... till she forcibly entered in October, 2014.” are required to be expunged / struck out from the written statement on the ground that she has already instituted suit No.149/2016 on the Original Side of this Court claiming damages of Rs.1.5 Crores for using the objectionable sentences as also has lodged Criminal Complaint No.5130/2015 in the Court of learned 4th Metropolitan Magistrate, Girgaon, Mumbai where the learned Magistrate has issued process against the defendants in terms of Sections 499 and 500 Indian Penal Code, 1860. He submitted that the assertions in paragraph-5 of the written statement are totally unwarranted and are not relevant for deciding the controversy raised in the suit instituted by the plaintiff. Said assertions are made only with a view to humiliating the plaintiff. He has taken me through the application dated 29.4.2016n made by the plaintiff. He further submitted that the plaintiff is niece of Varjivandas Shroff (Varjivandas Shroff is the maternal uncle of the plaintiff). On 22.1.2018 the plaintiff has obtained Letters of

Administration of Suryabala Varjivandas (wife of Varjivandas Shroff) and has obtained the Letters of Administration of maternal uncle Varjivandas Shroff on 2.1.2018. She is adopted by Varjivandas Shroff and Suryabala Varjivandas as they had no issue.

6. Mr. Chanderpal has invited my attention to the impugned order passed by the learned trial Judge and in particular paragraph-5 thereof. In paragraph-5, the learned trial Judge referred to the provisions of Order VI Rule 16 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'). After referring to these provisions, the learned trial Judge observed that it must be shown that the pleadings are unnecessary. It is not sufficient only to state that according to the party seeking striking out of the pleadings, said pleadings are defamatory or scandalous. He submitted that the learned trial Judge committed serious error in observing that the plaintiff's application is beyond the scope of Order VI Rule 16 of C.P.C. Basically, the assertions made in paragraph-5 of the written statement are wholly unnecessary for deciding the controversy between the parties.

7. On the other hand, Mr. Joshi supported the impugned order. He has taken me through paragraph-5 of the written statement and submitted that paragraph-5 has to be read along with the assertions made in other paragraphs of the written statement. The objectionable sentences cannot be picked out of context as suggested by the plaintiff.

He submitted that if the objectionable sentences are read in the context of the entire written statement, no case is made out for interfering with the impugned order.

8. Without prejudice to the above submissions, Mr. Joshi submitted that in case the Court is inclined to strike out the objectionable sentences it may be made clear that this shall be without prejudice to the rights and contentions of the defendants in the present suit, the suit filed on the original side of this Court as also the Criminal Complaint filed against the defendants.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record.

10. Order VI Rule 16 of C.P.C. reads thus :

**“ORDER VI
PLEADINGS GENERALLY**

16. Striking out pleadings .-- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading--

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.”

11. A perusal of the above extracted provision clearly shows that the Court has discretion to strike out any matter in any pleading at any

stage of proceedings which may be unnecessary. As mentioned earlier, the plaintiff has instituted suit for declaration of tenancy rights in the suit premises. As against this, it is the case of the defendants that the plaintiff has unlawfully trespassed, encroached and entered into the suit premises in or about October, 2014 high handedly with the help of another notorious tenant of the suit building after the death of her mother. The defendants have come with the case that the plaintiff all throughout resided with her mother at Khetwadi and after her mother expired in 2014 she shifted to the suit premises. It is in that context one has to consider the objectionable sentences appearing in paragraph-5 of the written statement. A perusal of the objectionable sentences, in my opinion, are clearly unnecessary for deciding the real controversy between the parties. Though the learned trial Judge in paragraph-5 observed that in order to invoke the provisions of Order VI Rule 16 of C.P.C. it must be shown that said pleadings are unnecessary, thereafter did not deal whether the objectionable sentences are really necessary for deciding the controversy between the parties. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. Hence, the petition is disposed of in following terms :

- i. The impugned order dated 21.10.2016 passed by the learned Judge, Court Room No.25 of the Court of Small Causes at Mumbai below Exhibit-16 in R.A.D. Suit No.647/2015 is quashed and set

aside. The sentences which are to the following effect shall be struck out from the written statement:

“The Plaintiffs entry to suit premises was not welcome by deceased tenant for her misadventure in 1995 of eloping, with a stranger and secretly marrying him. In 1995 Plaintiff left her mother and ran away with her paramour and married him but returned back after 20 days on failed marriage. The deceased tenant for that eloping never kept any relation with the Plaintiff, for her mis-adeventure and she was not even permitted to enter the suit premises till she forcibly entered in October, 2014.”

- ii. It is needless to observe that the Courts seized of the present suit i.e. Suit No.647/2015, the suit filed on the original side of this Court being Suit No.149/2016 as also the Criminal Complaint No. 5130/2015 filed against the defendants will be decided on their own merits and in accordance with law uninfluenced by the observations made in this order. All contentions of the parties in that regard are expressly kept open.
 - iii. Rule is made absolute in aforesaid terms with no order as to costs.
- Order accordingly.

(R. G. KETKAR, J.)