

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13352 OF 2017

M/s.Shiv Sabari Developers	.. Petitioner
Vs.	
Mrs.Anita Wd/o. Ashok Joshi and anr.	.. Respondents

Mr.Aniruddha A.Sapre a/w Ms.Amrita B. Singh & Ms.Priyanka Kadne, for the Petitioner.
Mr.R.Mishra I/b Mr.Ashok Saraogi, for Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE :18th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. By this Petition filed under Article 227 of the Constitution of India, the petitioner – original defendant No.2 has challenged the order dated 10/07/2017 passed by the trial Court allowing Chamber Summons No. 920 of 2014 filed for amending the plaint. Respondent No.1 – original plaintiff had filed a Suit for declaration that the defendants have no right to

disturb the plaintiffs possession in respect of room No.2 situated in Chawl No. 5 on property known as 'Moti Baug', Chembur. Mumbai. The declaration was also sought that any writing signed by defendant No.1 in respect of surrender of rights pertaining to room No.2 is not binding on the plaintiff. It is a matter of record that in another Suit filed by the plaintiff against the defendants, Consent Terms came to be filed between plaintiff and defendant No.1. As per the Consent Terms, it was agreed by the plaintiff and defendant No.1 that they will be joint tenants in respect of said room. It was further agreed that plaintiff will stay at a different place, however, her right as a joint tenant in respect of premises will remain intact and only because she is removing herself, her rights as a co-tenant shall not be challenged. It was further agreed that both of them shall be entitled to get benefits equally by way of compensation in lieu of the existing premises or shall share a new permanent alternate accommodation equally between themselves.

3. There was a subsequent development during the

pendency of the Suit in Contempt Proceeding filed by the present petitioner - original defendant No.2 in this Court that respondent No.1 undertook to remove herself from room no. 2. Accordingly, respondent No.1 – original plaintiff vacated the said room. Thereafter, present application is moved for amending the plaint contending that in view of Consent terms, the plaintiff is entitled to permanent alternate accommodation. By way of the amendment, reliefs are sought for declaration that plaintiff is entitled to get permanent alternate accommodation in lieu of existing premises and till such time is entitled to get temporary alternate accommodation and/or compensation. The trial Court allowed this application by the impugned order.

4. Learned Counsel for the petitioner submitted that once original plaintiff has vacated the suit premises, mere glance at the prayers made in the Suit would reveal that the Suit has become infructuous. In fact it has been so observed by the trial Court. In the submission of the learned Counsel, the only option for the trial Court then was to have dismissed the Suit as

infructuous. He would submit for any other reliefs, the plaintiff should have instituted a fresh Suit. He would further submit that in the course of Contempt Proceedings filed before this Court as the plaintiff has removed herself from the suit room during pendency of the Suit, therefore, the Suit has become infructuous. He would submit that nature of the Suit itself will change if the proposed amendment is allowed as now declaration is sought that the plaintiff is entitled to permanent alternate accommodation.

5. Learned Counsel for respondent No.1 supported the order passed by the trial Court.

6. I have gone through the order passed by the trial Court. No doubt, the Suit was initially filed by the plaintiff praying that his possession in the suit premises should not be disturbed by defendants. However, during the pendency of the Suit and during the course of Contempt Proceedings taken out in this Court, the plaintiff vacated the suit premises in terms of consent terms filed in another proceedings wherein it has been

stated that the plaintiff will be entitled for equal share in the new permanent alternate accommodation. The plaintiff made an application for amendment of the Suit. It is one of the contention of the petitioner that the petitioner was not a party to the said Consent Terms and therefore, the Consent Terms are not binding on the petitioners.

7. Be that as it may, plaintiff is claiming on the basis of the Consent Terms and there are subsequent events which necessitated filing of the application for amendment. I see no reason to interfere with the order of the trial Court allowing application for amendment as what is now sought by the plaintiff is permanent alternate accommodation in lieu of the premises which the plaintiff vacated during the pendency of the Suit. I see no reason to interfere with the discretion exercised by the trial Court allowing the amendment. The Petition is therefore rejected.

(M.S.KARNIK, J.)

Urmila
P.
Ingle

Digitally signed
by Urmila P.
Ingle
Date:
2019.09.26
18:43:15 +0530