

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8146 OF 2019

Digitally
signed by
Bhalchandra
G. Dusane
Date:
2020.12.16
17:57:43
+0530

Sumitra Shashikant Khokhani & Ors. Petitioners
Ori. Defendants

Vs.

Jyotindra Ishwarlal Khokhani & Anr. Respondents

Mr. Vineet B. Naik, Senior Counsel i/by Mr. Prabhanjan Gujar for
Petitioners.

Mr. P.S. Dani, Senior Advocate a/w Mr. Sanjiv Sawant a/w Mr. Abhishek
Matkar i/by Mr. Himanshu Kode for Respondents.

**Coram : NITIN W. SAMBRE, J.
Date : 9th DECEMBER, 2020**

P.C.:

1. The order impugned in the present petition dated 15th February, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal No.127 of 2013, below Exhibit 23, an application preferred by the Petitioners/Defendants/tenants for amendment of written statement to bring on record subsequent events as mentioned in the Schedule annexed thereto.

2. The Respondent claiming to be the owner of the suit property, which is properly identified as 'Amrut Bhavan', situated at Khokhani Lane, Ghatkopar (East), Mumbai, initiated R.A.E. & R. Suit No. 942/1633 of 2001 against the Petitioners. The said suit was resisted by the Petitioner through written statement. Same came to be decreed on 31st August, 2013. Feeling aggrieved, the Petitioners preferred an appeal being Appeal No. 127 of 2013 before the Appellate Bench of Court of Small Causes at Mumbai.

3. During pendency of an appeal before the Small Causes Appellate Bench, an application Exhibit 23 came to be moved by the Petitioners/ defendants/tenants seeking an amendment to their written statement at an appellate stage. The present Respondents entered into a Development Agreement with M/s Westbury Finvest Private Limited vide Memorandum of Understanding ("MOU")/agreement dated 11th July, 2009. According to the Petitioners, the respondents though are party to the said MOU, but have not signed the same and there are certain admissions given in the MOU by the landlord. It is also claimed that the developer have agreed to give permanent alternate

accommodation in lieu of suit premises with car parking. It is also claimed that the aforesaid events took place subsequent to filing of an appeal and as such there is necessity to amend the written statement. To bring on record filing of such subsequent events of Suit No. 180 of 2015 based on the aforesaid MOU. The said application, Exhibit 23 came to be rejected by the impugned order dated 15th February, 2019. As such, this petition.

4. Shri. Vinit Naik, learned Senior Counsel would invite attention of this Court on the eviction decree passed by Small Causes Court on 31st August, 2013. According to Shri. Naik the eviction is based on denial of the title of the Plaintiff-Respondent with respect to the suit premises and according to him, amongst other Issue No. 5(C) specifically deals with the same. He would further invite attention of this Court to the fact that the eviction is based on the provisions of Section 16, Sub-Section 6 of the Maharashtra Rent Control Act, 1999 and as such, according to him, if there are findings of denial of title, then it is necessary to bring on record the aforesaid suit and the MOU by way of an amendment. Shri. Naik would then urge that the

amendment to the written statement is necessary in the backdrop of the factual matrix of the property, which is a joint family property. The same was part of the partnership firm and all the Partners are co-owners that of the Petitioners. He would then urge that placing on record the document Exhibit 62 i.e. MOU in the suit proceeding, the very foundation was laid and that being so, the Petitioners intend to strengthen the same foundation in the appeal by incorporating appropriate pleadings in the written statement and as such no prejudice would be caused to the Respondents-Plaintiffs.

5. Per contra, Mr. Dani, learned Senior Counsel appearing for the Respondents would urge that the order impugned is just and proper. According to him, there is no necessity to carry out any amendment in the written statement that too at the appellate stage is the MOU itself is executed at Exhibit 62, as such he sought dismissal of the Petition.

6. Considered rival submissions.

7. I have perused the nature of amendment, which the Petitioner intend to carry out in his written statement particularly in the

backdrop of the pleadings in the written statement and issues which are dealt with by the Court below while decreeing the suit for eviction.

8. Ofcourse, this Court is not required to examine truthfulness in the amendment claimed for. However, the Court is required to find out whether the amendment is based on subsequent events as claimed and if so, whether such amendment is necessary for deciding the issue raised in the appeal.

9. This Court is not required to be oblivious to the principle of law that appeal is the continuation of the suit.

10. In the backdrop of aforesaid proposition of law, what can be noticed is the suit for eviction came to be decreed against the Petitioner/defendant.

11. As far as subsequent Suit No.180 of 2015 is concerned, though the same was initiated after passing of impugned decree, which is questioned in the appeal, the basis for such suit is an MOU /

agreement dated 11th July 2009. The said document dated 11th July 2009 was produced in the form of evidence before the trial Court in the eviction suit and was marked as Exhibit 62.

12. In the aforesaid background, the production of document dated 11th July 2009 at Exhibit 62, can always be referred to by the Petitioner during the course of hearing of the appeal.

13. This Court cannot be oblivious to the fact that the Respondent- plaintiff has not denied the pendency of Suit No.180 of 2015 and that being so, it shall always be open to the Petitioner to refer to the pleadings in the said suit including that of the documentary evidence, Exhibit 62.

14. As far as issue of denial of title and findings recorded by the trial Court is concerned, the appellate Court ofcourse can deal with the same in the light of above observations.

15. In the backdrop of aforesaid, it cannot be held that the amendment as is claimed by the Petitioner at Exhibit 23 was necessary

for adjudication of the controversy raised in the appeal. The contention of the Petitioner/original defendant based on document dated 11th July 2009 and pendency of Suit No. 180 of 2015 can be looked into by the Appellate Court by re-appreciating the evidence. As such, it cannot be said that by refusing amendment, any prejudice is likely to be caused to the Petitioner.

16. That being so, no case for interference in the order impugned passed below Exhibit 23 is made out. The petition, as such is devoid of merits and is dismissed accordingly.

(NITIN W. SAMBRE, J.)