

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9212 OF 2019

Subhash Jha

... Petitioner.
(Orig. Defendant No.2)

V/s

Maurin Properties Pvt. Ltd. and Anr.

... Respondents.

Mr. Uday Warunjikar a/w Mr. Harekrishna Mishra i/b Law Juris for the
Petitioner.
Mr. Vinod Solanki for the Respondent No.2.

CORAM : A. S. GADKARI, J.
DATE : 4th MARCH, 2020

P.C. :

1. By the present Petition under Article 227 of the Constitution of India, the petitioner – original defendant No.2 has impugned Order dated 10th December 2018 passed below Exhibit-39 in R.A.E. Suit No.662/1068 of 2012 by learned Judge, Small Causes Court, Mumbai, rejecting the said application preferred by the defendant No.2 for amendment in the written statement.
2. Heard Mr. Warunjikar, learned counsel for the petitioner at length and Mr. Solanki, learned counsel for the respondents. Perused the record annexed to the Petition.
3. The record indicates that, the respondent No.1 has instituted R.A.E. Suit No.662/1068 of 2012 against the respondent No.2 being tenant and the petitioner/defendant No.2 being sub-tenant for their eviction from

the suit premises. After receipt of summons, the petitioner appeared therein and filed his written statement on 17th August 2012. In due course of time, the issues are framed and the parties herein have filed their Affidavit in lieu of examination in chief.

The record further indicates that, in the cross-examination of PW-1 by the petitioner/defendant No.2, he gave admission that, both buildings including suit premises are purchased by the plaintiff i.e. Maurin Properties at the cost of Rs.5,35,000/- (Rupees Five Lakhs Thirty Five Thousand Only) and accordingly the plaintiff has paid required stamp duty on the said amount.

After the said admission is given by the respondent No.1/original plaintiff, the petitioner herein filed an elaborate application dated 1st September 2018 for amendment of his written statement. As noted earlier, the Trial Court by its Order dated 10th December 2018 has rejected the said application.

4. Mr. Warunjikar, learned counsel for the petitioner submitted that, the fact that the suit building has been purchased by the respondent No.1 for a particular amount was not within the knowledge of the petitioner, at the time of the filing of written statement, and it has come on record during the course of cross examination conducted by the petitioner of PW-1 only and therefore, it is necessary to bring the said fact on record by way of amendment to the written statement. He submitted that, the aspect of 'due diligence', at the time of filing of the written statement will not come in his

way in this particular case as, at the time of filing written statement, the said fact was not within the knowledge of the petitioner and therefore amendment in the written statement is necessary. He submitted that, in view thereof, impugned Order may be set aside by allowing the present Petition.

5. The proviso to Order 6 Rule 17 is substituted by amendment Act of 22 of 2002 and it has come to effect from 1st July 2002. The said proviso postulates that, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that, inspite of due diligence, the party could not have raised the matter before the commencement of trial.

6. It is to be noted here that, in the plaint itself the respondent No.1 has pleaded that, he is the owner of the suit building. It is the specific case of the plaintiff that, the respondent No.2/defendant No.1 was a tenant in the suit premises and he has sublet the suit property to the petitioner/defendant No.2. The petitioner in his written statement has admitted the fact that, he has taken suit premises from the respondent No.2/defendant No.1 by paying remuneration in that behalf and by way of deed of registered Agreement. That the petitioner has agreed remuneration of Rs.21,000 (Rupees Twenty One Thousand Only) per month to be paid to the respondent No.1 in that behalf.

7. In the present case, admittedly, the petitioner claims right in the suit property through the respondent No.2/original defendant No.1 and the petitioner has no independent right in the suit property. The petitioner in its

written statement has admitted that, by way of a registered Agreement, he is using the suit premises and paying remuneration for the same to the respondent No.2. Assuming for the sake of argument, if the petitioner is termed as sub-tenant, then also his sub-tenancy flows from the original tenant namely the respondent No.2/defendant No.1.

8. A bare perusal of amendment application would indicate that, it runs in more than 10 pages and it appears to this Court that, by the said amendment, the petitioner intends to change the basic structure of his written statement. It is the settled position of law that, an admission extracted in evidence and beneficial to a party can not be washed away by way of amendment of pleadings. The petitioner in the cross-examination of PW-1 has extracted an admission which is in confirmity with the pleading in para No.1 of the plaint and detrimental to the contention of the petitioner.

9. 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 restrain 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*.

10. After perusing the entire record, this Court is of the considered view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

11. The Petition being dehors of merits, is accordingly dismissed.

(A. S. GADKARI, J.)