

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4567/2016

The Corporation of the Sisters Holy Cross, Amravati, A company incorporated
under the Provisions of Company's Act by its authorized Attorney Sister

Nirmala Quadros

...Versus...

Haider Ali Sabdar Ali

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri J.A. Anthony, Counsel for petitioner
Shri J.J. Chandurkar, Counsel for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 27/02/2020

1. The present petition is arising out of the suit for ejectment, possession and damages filed by the petitioner against the respondent. It is pertinent to note that the suit is of the year 1993, in which the defendant/respondent had filed his written statement on 18/8/1994. Thereafter, for one or the other reason, the matter was not proceeded with. The plaintiff thereafter filed its affidavit-evidence on record however, the learned Counsel for the petitioner states that the further chief was also not recorded, at which stage, the defendant filed an application for amendment of the written statement to raise a plea that the agreement of lease as

claimed by the plaintiff/petitioner was a forged and fabricated document. This amendment came to be allowed by the learned Trial Court by its order dated 12/2/2016 holding that the proposed amendment was merely, in the nature of an explanation and therefore, no prejudice would be caused to the plaintiff. The order dated 12/2/2016 was challenged by way of appeal, which came to be dismissed by judgment dated 27/4/2016 holding that by the proposed amendment, a new case was not set out rather only an explanation by way of elaboration, to the defence already raised was being sought to be placed on record. The Appellate Court found that the evidence is yet to commence and considering the same, dismissed the appeal.

2. Shri Anthony, learned Counsel for the petitioner takes exception to the orders of the Trial Court as well as of the Appellate Court and contends that considering the fact that the suit was filed in the year 1993 in which the written statement was filed in the year 1994, the amendment sought for in the year 2016 ought not to have been permitted by the Courts below.

3. Shri Chandurkar, learned Counsel for the respondent supports the impugned order and judgment.

4. Though the suit is of the year 1993 and the written statement has been filed in the year 1994, it is an admitted position on record, as stated by the learned Counsel for the petitioner/plaintiff, that the affidavit-evidence came

to be filed on 14/10/2015, and the examination-in-chief was not recorded when the application for amendment came to be filed on 11/1/2016. It is also trite position of law that it is permissible for the defendant to raise inconsistent pleas in the written statement. The findings by the Courts below are to the effect that no new plea is being raised by the defendant but only an elaboration of the plea already raised in defence in the written statement is being sought.

5. That being the position, I do not see any infirmity in the order passed by the Trial Court as well as the judgment of the Appellate Court. The writ petition therefore is without any merits and is accordingly dismissed without costs. However, considering that the suit is of the year 1993, the Trial Court is directed to decide the suit, within a period of ten months from the date of receipt of the order.

JUDGE