

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

WRIT PETITION NO. 2218 OF 2021

Smt. Dayalibai wd/o Daryanomal Jani,
 aged 72 years, Occupation-Household,
 R/o. 101, Madhava Apartments,
 Clarke Town, Kadbi Chowk, NAGPUR,
 through power of attorney,
 NARESH S/O DARYANOMAL JANI,
 aged 46 years, Occupation-Business,
 r/o. Sadoday Tower, Kadbi Chowk,
 Nagpur, Ph. No. 93251 77700.

.. Petitioner
 (Original Plaintiff)

.. Versus ..

Natwar s/o Loonkaran Khemka,
 aged about 50 years,
 Prop. of Khemka Sales Corporation,
 45, Gandhi Grain Market, Telephone
 Exchange Chowk, Central Avenue,
 NAGPUR-8.
 r/o. Honey Sagar Apartment, Flat No.302,
 Wardhaman Nagar Chowk,
 Central Avenue, Nagpur.

.. Respondent
 (Original Defendant)

.....
 Shri D.N. Dani, Advocate for the petitioner,
 Shri R.M. Sharma, Advocate for the respondent.

CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 12.08.2021
PRONOUNCED ON : 20.09.2021

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
 with the consent of the parties.

2. This petition is filed by the landlord-original plaintiff challenging the judgment dated 23.02.2021 (Annexure "G"), passed by the learned District Judge-3, Nagpur, below Exhibit-1 in Civil Revision No. 09 of 2020 filed by the tenant, thereby allowing the Revision and setting aside the order dated 24.02.2020, passed by the Small Causes Court, Nagpur, below Exhibit-71 in RCS No.241 of 2014.

3. Brief facts leading to the petition are that:

The landlord filed Regular Civil Suit No.241 of 2014 against the tenant seeking eviction of the tenant from the suit property i.e. "front side open space of about 21 feet x 15 feet = 315 square feet and also shop block admeasuring 21 feet x 60 feet = 1260 square feet on the ground of *bona fide* requirement. The suit is filed under Section 15 (1) read with Sections 16 (1) (a), (b) and (g) of the Maharashtra Rent Control Act, 1999 (for short, 'the Act of 1999'), as the landlord wanted to settle her son and grandsons in the suit property. The pleadings in respect of *bona fide* requirement of the landlord are made in paragraphs 9 and 10 of the plaint.

4. The defendant resisted the suit by filing written statement. The statements in para 9 and 10 of the plaint are denied stating that the son and grandson of the plaintiff are not interested in starting the business in the suit property.

5. During the cross-examination, the son of the landlord (PW-1) gave an admission to the effect *"it is true that the remaining half portion means vertical division of the front portion in possession of the defendant and after its vertical division it can be used for business purpose as stated above."*

6. The defendant filed an application Exh.71 for amendment of the written statement contending that if the suit premises is divided vertically, the trial Court can pass decree of partial eviction in respect of tenanted premises. The said application was rejected by the trial Court. The tenant preferred Revision, which was allowed. The order allowing the Revision is impugned herein.

7. Heard the learned Advocate for the petitioner and the learned Advocate for the respondent.

8. The learned Advocate for the petitioner submits that the suit was filed on 7.7.2014 and the written statement was filed on 3.9.2014. A vague and general reply was given by the defendant in the written statement to paragraphs no. 9 & 10 of the plaint. There is no specific denial on the part of the defendant to the averment of the landlord on the ground of specific *bona fide* requirement of the tenanted premises for settling her son and

grandsons. On 15.6.2015, the affidavit in lieu of evidence of PW-1 Naresh s/o Daryanomal Jani was filed and his cross-examination was completed on 31.7.2017. Thereafter the plaintiff examined three witnesses and closed her evidence. Then the matter was kept for defendant's evidence. Thereafter, belatedly application Exh.71 seeking amendment in the written statement was filed on 5.12.2019. Learned Advocate further submitted that the trial Court was justified in rejecting the application, however, the revisional court has erroneously allowed it. The revisional court has exceeded its jurisdiction as the impugned order is passed without coming to the conclusion that the trial court's order was perverse or erroneous. He, therefore submitted that the impugned order is unsustainable and the same may be set aside by maintaining the trial court's order.

9. On the other hand, the learned Advocate for the respondent submits that in view of the admission given by the PW-1 in his cross-examination that vertical division of the suit property is possible and that they are going to do vertical division of the property for business of the grandsons and son, the amendment was necessitated. He supported the order of the revisional court stating that since the amendment was sought on the basis of admission in the cross-examination, the proviso to Order VI Rule 17 of the Code of Civil Procedure would not apply. In terms of Section 16 (2) of the Act of 1999, according to him, the

amendment in the written statement was necessary and was rightly allowed by the revisional court. He, therefore, submits that there is no merit in the petition and the same may be dismissed.

10. Admittedly, the evidence of the plaintiff is over and the defendant has to adduce his evidence and at that time, the application Exh.71 seeking amendment to the written statement was filed. In the written statement, the respondent has given vague reply to the pleadings of *bona fide* requirement in paragraphs no. 9 and 10 of the plaint. The trial has already commenced and the tenant has failed to show that in spite of due diligence, he could not seek the amendment in the written statement at an earlier point of time. The trial court has rightly held that the proposed amendment was hit by proviso to order VI Rule 17 of the Code of Civil Procedure.

11. The tenant is trying to interpret the admission given in the cross-examination of P.W.1 so as to suit his own purpose. The said interpretation is misconceived and cannot be accepted. The proposed amendment is not justified in any manner. It appears that only with a view to prolong the matter, the application for amendment to the written statement was moved by the tenant. The amendment cannot be said to be necessary for deciding the real controversy between the parties.

12. The revisional powers under Section 34 (4) of the Act of 1999 are limited and those can be exercised only when the order passed by the trial Court is perverse or illegal. Though the tenant failed to point out any perversity or illegality in the trial Court's order, the Revisional Court has erroneously proceeded to allow the Revision, as if, it was exercising the powers of the appellate Court. The revisional court has erroneously exercised its jurisdiction in setting aside the order passed by the trial Court and allowing the amendment application. The revisional court erred in coming to the conclusion that the proposed amendment is necessary for deciding the real controversy between the parties. The revisional court further erred in recording a finding that the cause of action for filing application for amendment arose on the basis of admission given by PW-1 in cross-examination, therefore, it can be termed as subsequent events and hence proviso to Order VI Rule 17 of the Code of Civil Procedure would not apply. The revisional court has failed to correctly apply the ratio in ***Mr. Conception Fernandes and another .vs. Mrs. Tasneem Shaikh and others, 2014 CJ (Bom) 1060***, wherein it is held :

"It cannot be taken to answer the test of "due diligence" as required by the proviso under Rule 18, Order 6 CPC. The proviso contemplates parties to exercise due care and caution in raising the matter before the Court and once trial commenced, no new or additional plea can be permitted to be raised unless the party shows that with all

diligence as it its command, it could not raise it before the commencement of the trial. The due diligence prescribed by the proviso is of the parties and of nobody else including the Advocate on record.”

13. In the facts of the present case, the respondent has failed to prove that in spite of exercising due care and caution, he could not raise the plea before commencement of trial. In the present case, no new or additional plea can be permitted to be raised by the respondent. The revisional court has exceeded its jurisdiction by allowing the revision application.

14. In ***Surender Kumar Sharma .vs. Makhan Singh, (2009) 10 SCC 626***, the Hon’ble Supreme Court held that merely because belated application is filed for amendment, the same is not liable to be rejected merely on ground of delay. If the court finds that, by allowing the application, real controversy between the parties, may be resolved, then the Court can allow the application by compensating the other party. The court has wide discretion to deal with the application.

15. In the case in hand, the amendment sought by the tenant was not necessary to decide the real controversy between the parties. Hence it was liable to be rejected and was rightly rejected by the trial Court. It is apparent that the tenant is trying

to raise an additional ground after commencement of trial, which is not permissible in law and, therefore, the ratio laid down by the Hon'ble Apex Court in **Surender** (*supra*) is not applicable to the case of the tenant.

16. For the aforestated reasons, the impugned order is unsustainable in law and in the facts of this case. Hence, the following order :

ORDER

(1) The writ petition is allowed.

(2) The impugned order dated 23.02.2021 (Annexure-G) passed by the District Judge-3, Nagpur, below Exhibit-1 in Civil Revision No.9/2020 is hereby quashed and set aside.

(3) The Trial Court is directed to decide the suit expeditiously and in any case, within a period of six months from the date of this order.

17. Rule is made absolute in above terms. No costs.

(N.B. Suryawanshi)
JUDGE

Gulande