

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8061/2019

**Mangaldas Arjundas Choudhary thr L.Rs and others ...Versus... Mohd. Shahid
Mohd. Jabir and ors**

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

Court's or Judge's orders

Ms. Y.B.Sharma, Advocate for petitioner
Mr. N.G.Jetha, Advocate for Respondent Nos.1 to 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 26/11/2021

Heard Mr. Gupta, learned counsel for the petitioner and Mr. Jetha, learned counsel for respondent.

2] The petition challenges the rejection of application for amendment of the written statement filed by the defendant. Mr. Gupta, learned counsel for the petitioner submits that during the course of cross-examination of AW-2 in MJC No. 53/2017, who was an architect, an admission has come on record that the suit property falls in slum area, which is the reason why the amendment was necessitated. He therefore submits that an application seeking to place this plea on record ought not to have been rejected by the learned Small Causes Court, as the plea would go to the very root of the matter.

3] Mr. Jetha, learned counsel for respondent raises an objection that the petition would not be

maintainable in view of provision of Section 26-A of the Provincial Small Cause Courts Act, 1887, which provides an appeal from a decree or order made by the Court of Small Causes exercising jurisdiction under Section 26 of the Act to the District Court. Further reliance is placed upon Section 34(1)(b) of the Maharashtra Rent Control Act, which also provides an appeal from a decree or order. He further submits that in MJC No.53/2017, an identical application for amendment of the reply was made by the present petitioner, which came to be allowed by the learned Small Cause Court, which was challenged before this Court by way of W.P. No. 2802/2019, wherein by judgment dated 9.9.2019, the order allowing the amendment was set aside and the application for amendment was dismissed. He submits that by way of the present application for amendment an identical plea has been raised by the petitioner and therefore, the reasoning in the judgment dated 9.9.2019 should also govern the fate of the present application.

4] Mr. Gupta in rebuttal submits that the order dated 9.9.2019 considered an application for amendment made in MJC No. 53/2017, which was for fixation of fair rent, whereas the present application has been filed in proceedings for eviction and possession and therefore, the nature of the proceedings is a distinguishing factor.

5] In so far as the plea that an appeal is maintainable, with due regard to the learned counsel for the respondent, I am unable to accede to the same for the reason that Section 26A of the Provincial Small Cause Courts Act, 1887, has to be read in conjunction with Section 34 (1)(b) of the Maharashtra Rent Control Act and specifically proviso (a) thereto, which provides that no appeal shall lie from a decree or order made in any suit or proceedings in respect of which no appeal lies under the CPC. This would clearly indicate that since as order under Order 6 Rule 17 of CPC is not an appealable order, an appeal either under Section 26-A of Small Cause Courts Act or under Section 34(1)(b) of the Maharashtra Rent Control Act would clearly not be maintainable, in respect of an order rejecting or allowing an application for amendment.

6] Though a distinction has been sought to be made by Mr. Gupta, learned counsel for the petitioner between the filing of an MJC for fixation of fair rent and filing of a Suit for eviction and possession in the matter of applicability of the judgment in WP No.2802/2019, decided on 9.9.2019, it is a matter of record that the parties are same, the property which is the subject matter of both the proceedings is also the same. Not only that the plea which was sought to be raised in MJC 53/2017 by way of application under Order 6 Rule 17 of the CPC, which has been rejected by this Court is also identical in

the present petition. Since this is the position, judicial propriety would demand that what has been held in Writ Petition No. 2802/2019 in the above situation should also hold good in the present petition. That being the position, I do not see any reason to interfere in the impugned Order dated 11.11.2019 passed by the learned Small Causes Court, more so when the application came to be filed when the matter was fixed for the cross examination of the plaintiff. The petition is accordingly dismissed. No costs.

JUDGE

rvjalit