

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 12300 OF 2021

Rajendra Govindram Mandhwani

...Petitioner

Versus

Arati Sanjay Hujurbajar

...Respondent

.....

Mr. Subodh P. Shah, Advocate for the petitioner

Mr. Sushant V. Dixit, Advocate for respondent

.....

CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 04TH, 2022

PER COURT : -

1. Heard learned Advocate Shri. Subodh Shah for the petitioner and learned Counsel Shri. Sushant Dixit for the respondent.

2. The petitioner is aggrieved by an order passed below Exh. 56, on an application filed under Order 18 Rule 4 of the Civil Procedure Code read with Section 151 seeking striking out of the portion of the evidence affidavit of the plaintiff filed at Exh. 27.

3. The argument need to be appreciated in the backdrop of the fact that the plaintiff i.e. the respondent to the writ petition

instituted a suit for eviction on the ground of *bona fide* requirement. The plaintiff tendered one affidavit in examination in chief and produced on record documents referred to in the affidavit.

. Alleging that the evidence affidavit travel beyond the pleadings in the plaint, the defendant filed an application to strike out the portions from the affidavit in examination in chief since it travel beyond the pleadings. This application was filed vide Exh. 56 and came to be rejected under the impugned order.

4. As per the plaint, the said suit property/shop was given on rent to the defendant but subsequently the possession of it was obtained and it was given on rent to the defendant on monthly basis. It was specifically pleaded that the plaintiff and her husband are into medical profession and they require the premises in question for their profession and they do not intend to continue the tenancy of the respondent. The steps taken to get the premises vacated are also specifically pleaded. It is also pleaded that the agreement entered with the defendant was for 11 months and by efflux of time the right of the defendant in the suit property has come to an end. The cause of action is pleaded based on the pleadings and the relief is sought. In the evidence affidavit filed by the plaintiff, she has supported her pleading to the effect that she acquired the qualification in medicine

and was married to Dr. Sanjay Hujurbajar, who is also a Doctor by profession and even their daughters are into the profession. The details of the manner in which the plaintiff is desirous of taking forward the medical profession through her husband and her daughters is highlighted in the evidence affidavit. The *bona fide* need for expansion of the existing hospital is also focused upon. Perusal of the evidence affidavit, specifically para 2 and 3 are in support of the specific pleading of the plaintiff in the plaint seeking possession of the suit premises on the basis of *bona fide* requirement for the purpose of professing the profession by herself and her husband, who are into the profession. The evidence affidavit is objected to by the petitioner by stating that it travel beyond the pleadings. The learned Counsel for the petitioner (defendant) has relied upon the decision of the Apex Court in the case of **State Bank of India and others Versus S. N. Goyal** reported in (2008) 8 SCC 92, wherein the Apex Court was dealing with the proceedings in a departmental inquiry and examining the misconduct on part of the delinquent. In the wake of the peculiar facts involved, the observations are made in paragraph no. 19. I do not think that this authority and the observations of the Apex Court in any case are of any succor to the petitioner. The evidence affidavit is permitted to be filed supporting the claim in the plaint and the averments being

made on oath. It is always open for the other side to cross-examine the plaintiff *qua* the evidence which has come on record through the evidence affidavit. The list of documents which have been filed by the plaintiff support the evidence affidavit and it cannot be said that the affidavit travel beyond the pleadings since concisely the pleadings set out a plea of *bona fide* need on account of the medical profession of the plaintiff and her husband and the evidence affidavit also highlight the manner in which she is desirous of expanding her medical practice in the larger interest of the public and for rendering medical services to the public at large. As far as the portion of the evidence affidavit where the plaintiff has deposed about a statement that she has already instituted the proceedings against 17 other shop owners and yielded result in her favour, since this order obtained by her is subsequent to the filing of the suit, and being a matter of record of which the court in any case can take judicial note, since the proceedings are decided by the court of competent jurisdiction, I do not think the evidence affidavit on that aspect also travel beyond the pleadings.

. In the wake of the aforesaid, upholding the impugned order the petition is found without any merit and substance is dismissed.

5. Since the evidence affidavit has been filed in the year 2018 and it is informed by the learned counsel for the respondent that the proceedings are stalled though there is no stay granted by this court, it is expected that in the wake of the dismissal of the writ petition, the learned trial Court shall fix a date for cross-examination of the plaintiff at the earliest and conclude the proceedings in the RCS No. 399/2014 within a period of six (06) months from today.

[BHARATI H. DANGRE]
JUDGE