

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

WRIT PETITION NO.9987 OF 2021

**SURESH RAMNARAYAN MANDORE AND ANOTHER
VERSUS
DEVIDAS HARIBHAI VED**

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Advocate for Petitioners : Mr. Satyajit S. Bora

Advocate for Respondent : Mr. G. S. Rane

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th JUNE, 2022

PER COURT :

1. By this petition filed under Article 226 and 227 of the Constitution of India the petitioners challenge the order passed by learned Civil Judge, Junior Division (5th Court), Jalgaon below Exhibit-71 in R.C.S. No.266/2015, thereby rejecting the application filed by petitioner No.1/defendant No.1 under Order VI Rule 17 of the Code of Civil Procedure.

2. Respondent/plaintiff filed R.C.S No.266/2015 under the provisions of Maharashtra Rent Control Act, 1999, seeking possession of the suit property which is given on rent to the petitioners/defendants. Prior to filing of this suit, plaintiff had filed R.C.S. No.251/2014 against the defendants seeking possession of the suit property rented out to the defendants. The defendants objected to the maintainability of the said suit by filing written statement contending that the suit property is an open space and

therefore, does not fall within the definition of 'premises' under the Maharashtra Rent Control Act, 1999. The plaintiff, therefore, withdrew the said suit and filed the present suit bearing R.C.S. No.266/2015 under the provisions of Transfer of Property Act, 1882. The defendants appeared and filed written statement. In paragraph No.4 of the written statement they have admitted that by and large the description of the suit property in the plaint is correct. They, however, disputed the boundary of the suit property.

3. Thereafter, after commencement of trial the defendant No.1 filed application Exhibit-71 seeking amendment in the written statement, thereby proposing amendment to the effect that the description of the suit property is totally incorrect. So also, certain other amendment is also proposed. The ground given for belatedly filing the application is that, due to oversight the said statement was remained to be made in the written statement. The trial Court, after hearing both the parties rejected the said application. Hence, the present petition.

4. Heard Mr. Satyajit S. Bora, learned advocate for petitioners, Mr. G. S. Rane, learned advocate for respondent.

5. Learned advocate for petitioners assailed the impugned order contending that the petitioners are entitled to take inconsistent stand. As the earlier advocate failed to incorporate the said statement in the written statement, the petitioners were

required to file application under Order VI Rule 17. He submits that the trial Court has erred in coming to the conclusion that the defendants cannot withdraw the admission by taking inconsistent pleas by way of amendment. In support of his submissions, he relied on *Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others (AIR 2007 SC 1663)*.

6. Per contra, the learned advocate for respondent supported the impugned order. He submits that vital admission given by the petitioners is sought to be withdrawn by way of amendment, which is not permissible. There is lack of due diligence on the part of the petitioner No.1 in filing the said application. As the application is filed after commencement of trial at belated stage the same is rightly rejected by the trial Court. In support of his submissions, he relied on *Jayashree Subhash Kalbande and another Vs. Bhaurao Nagorao Dekkar and others (2014(4) Mh.L.J. 168)*, *Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria & Others Vs. Sheo Prakash Kajaria and Others (2015 AIR SCW 6475)* and *Prabhakar Sadashiv Gokhale & Another Vs. Ramesh Shankar Ladkat & Others (2017(4) Mh.L.J. 634)*.

7. It is a matter of record that earlier suit was filed by the respondent/plaintiff i.e. R.C.S. No.251/2014 under the provisions of Maharashtra Rent Control Act, 1999. The same was resisted by the petitioners/defendants by raising a ground that the suit property is

open space and therefore, provisions of Maharashtra Rent Act are not applicable. On the objection being raised, the plaintiff withdrew the said suit and filed present suit bearing R.C.S. No.266/2015 under the provisions of Transfer of Property Act. The defendants in paragraph No.4 of the written statement have categorically averred that the description of the suit property is ordinarily correct. They only disputed the boundary. The written statement is filed on 02-01-2016. Thereafter on 05-02-2016 issues are framed. The plaintiff submitted his affidavit in lieu of examination on 25-08-2016 and thereafter entered into the witness box on 19-09-2017. The matter is posted for cross-examination. At this stage, the present application seeking amendment is filed.

8. It is clear from the record that the admission given by the petitioners/defendants in the written statement is sought to be withdrawn by way of proposed amendment, which is not permissible in law. Though the learned advocate for petitioners relied on *Usha Balashaheb Swami* (supra) to contend that even if the petitioners are seeking to withdraw the admission made by them, still it is permissible in law for the defendants to take inconsistent pleas. It is not possible to accept the said submission as in the said decision the Hon'ble Apex Court has specifically observed that addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written

statement is permissible. However, that by itself does not permit the defendants to withdraw the admission made in the earlier pleadings.

9. In ***Ram Niranjana Kajaria*** (supra) it is held :

"23. But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Others (AIR 1974 SC 471):

"27. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions...."

24. We agree with the position in Nagindas Ramdas (supra) and as endorsed in Gautam Sarup (AIR 2009 SC (Supp) 363) (supra) that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava (AIR 1983 SC 462) (supra), does not reflect the correct legal position and it is overruled."

10. In the light of aforesaid ratio, the petitioners cannot be permitted to withdraw the admission given by them in the written statement particularly in the peculiar facts of the present case, as because of the objection raised by the petitioners as to the maintainability of the earlier suit under the provisions of Maharashtra Rent Control Act the said suit was withdrawn and present suit is filed. In that view of the matter the petitioners are

not permitted to withdraw the admission by way of amendment.

11. The application of petitioner No.1 is also rejected on the ground of lack of due diligence. On 02-01-2016 written statement is filed by the petitioners. Thereafter, issues were framed in the year 2016 and the plaintiff entered witness box in the year 2017. Present application is filed on 16-07-2019 i.e. after commencement of the trial. Thus, total lack of due diligence on the part of petitioner No.1, in filing the said application is evident. The ground of oversight and the ground of change of advocate given as a cause for delay cannot be accepted. The trial Court has rightly rejected the application on the ground of lack of due diligence.

12. The trial Court has properly appreciated the facts, submissions and the judgments cited by both the parties. Well reasoned order passed by the trial Court is not liable to be interfered in the extraordinary writ jurisdiction. The petition sans merit is, therefore, dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)