

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10754 OF 2022

Mr. Dilip Ramanugrah Shastri & Two Ors. .. Petitioners
v/s.
Shri Yashwant V. Avalaskar .. Respondent

....
Mr. S.P. Srivastava, for the Petitioners.

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CORAM : S.M. MODAK, J.

DATE : 14 SEPTEMBER 2022

ORAL JUDGMENT:

Heard learned Advocate for the Petitioners/defendants. The correctness of the order dated 12 August 2022 passed by the Court of Small Causes in Rent Act Eviction Suit is under challenge. By way of the said order, the trial court has permitted the plaintiff to amend the plaint. The predominant reason for allowing the amendment was that the amendment was introduced by way of elaboration and explanation. This reason finds place in para no.6 of the order.

2. Learned Advocate for the Petitioners invited my attention to the averments in the plaint, so also in the application for

amendment and also to the Schedule of amendment. He made submission on following main grounds:

- (a) The amendment was sought after the issues are framed, that is to say, after the commencement of the trial and the case does not fall within the purview of proviso to Order 6 Rule 17 of CPC.
- (b) Allowing the amendment amounts to changing the cause of action.
- (c) The suit is of the year 2009 and the amendment sought is in fact barred as per the law of limitation.
- (d) There is a criticism to the conduct of the plaintiff in seeking amendment again and again.

3. Learned Advocate rendered upon the judgment in case of *Saiyed Rashedakhatun vs. Vishnubhai Ambalal Patel*¹ and more specifically para no. 41. The High Court of Gujarat has elaborated when it can be said that the trial of the suit has commenced. It commences when the issue is settled and the suit is fixed for recording of evidence. According to the Petitioners, the trial court has wrongly interpreted the provisions of law relating to commencement of the trial. In para no.6 the trial court observed thus:

“It is admitted position on record that evidence by way of affidavit under Order 18 Rule 4 is yet to be placed on

¹ C/SCA/1871/2013

record by the plaintiff. Therefore it cannot be said that after beginning of the trial present application is filed at belated stage”.

This reasoning is certainly not as per the interpretation about when the trial commences. Whether the plaintiff has filed the affidavit of evidence or not is not material but what is material is settlement of the issues and in this case it has happened. But I do not think that on this wrong interpretation about the provisions of law, the order needs to be set aside. It is for the reason that the said order has been passed on an amendment application seeking explanation to be brought on record.

4. If the averments in para nos. 4 and 5 of the plaint are perused, we may narrate the following facts:

- (a) There is a pleading that for the last six months, the defendant is not using the suit premises.
- (b) It is kept in locked and unused condition.
- (c) The non-user by the defendant is/was contrary to the provisions of Section 16(1)(a) and Section 16(1)(n) of Maharashtra Rent Control Act, 1999.
- (d) The defendants have no reasonable ground for keeping the premises locked and unused.

So certainly the plaintiff has taken non-user as one of the ground of eviction.

5. I have perused the Schedule of amendment which is annexed at page no.32. On perusing it, one can certainly say that by way of this amendment, the plaintiff sought to elaborate the ground of non-user pleaded in para nos. 4 and 5. The trial court has considered the amendment in the proper perspective. It cannot be said that by way of amendment the plaintiff sought to incorporate any additional ground. Ground was already there, plaintiff has explained it by way of proposed amendment.

6. It is true that the provisions of Order 6 Rule 17 is in two parts. As per the first part, the amendment can be allowed at any stage of the proceeding. Whereas as per the proviso, the amendment can be allowed after the commencement of the trial only when the party has shown due diligence. It is true that the trial has already crossed the first stage and the suit is fixed for recording of evidence. There is an emphasis that the plaintiff has to overcome the test of due diligence. Learned Advocate invited my attention to para nos. 3 and 4 of the amendment application filed at page 29. The plaintiff has pleaded that “There is one more defect in the pleading and it is required to be rectified by amending the plaint.”. The plaintiff has further pleaded that “There is a defect in drafting.”

7. On perusing those reasons, what I find is that strictly speaking the plaintiff has not sought for amendment. What the

plaintiff has sought is elaborating the ground of eviction already pleaded. So what I find is that the reasons mentioned in the application are sufficient enough to convince the Court to allow the amendment.

8. For the above discussion, I do not find that even case is made out for issuing of a notice. Hence, the writ petition is dismissed. The Court has made these observations after taking *prima facie* view of the matter and the trial court may decide this ground of eviction as per the merits without being influenced by these observations.

(S.M. MODAK, J.)