

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14355 OF 2022

Akhilesh Ramraksha Yadav ... Petitioner

Versus

Shyamlal Matabhikh Yadav & Ors. ... Respondents

Mr. Abhinesh Yadav for the Petitioner.
Ms. Aditi S. Naikare for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 23rd NOVEMBER, 2022.

ORDER :

1 Heard the learned Advocate for the parties.

2 By this Writ Petition the Petitioner seeks quashing and setting aside of impugned order dated 26.09.2022 in Appeal No.196 of 2008 by which amendment application to the written statement was not allowed.

3 The learned Advocate for the Petitioner states that by the impugned order passed by the Small Causes Court, Mumbai, amendment had been sought by the Petitioner in the written statement in view of Notification of Revenue and Forests Department dated 16.01.1996 which

included the suit premises as forest land. The written statement had proceeded on the premise that the suit premises was situated on Survey No.227 and not Survey No.239/1 (forest land). He has submitted that the fact of the Notification dated 16.01.1996 came to the knowledge of the Petitioner after order was passed by the Small Causes Court in R.A.E & R No.470/1085 of 1996 filed by the Respondent No.1 herein against another party Defendant. The order dated 24.06.2016 passed in R.A.E. & R No.470/1085 of 1996 had allowed the application under Exhibit-90 and directed City Survey Officer, Malad, who was appointed as the commissioner to locate the suit premises. Pursuant to the said order the City Survey Officer had made survey and referred to the Notification dated 16.01.1996 from Revenue and Forests Department. The Notification is stated to have been furnished to the Petitioner herein in another R.A.E. & R Suit No.471/1086 of 1996. The learned Counsel for the Petitioner has accordingly relied upon the application taken out before the Small Causes Court under Exhibit 81 for the amendment of the written statement which according to him has been erroneously rejected and which led to the filing of the present Petition.

4 The learned Counsel appearing for Respondent No.1 has vehemently opposed the Writ Petition on the ground that the Petitioner herein has taken out prior applications for amendment of written statement

and appeal memo on various occasions. This has been observed in the impugned order dated 26.09.2022. The impugned order upon considering that the prior applications taken out by the Appellant were rejected, held that the Petitioner herein has not made out a case that he was diligent in seeking to amend the written statement. Accordingly, the application was held to be not maintainable.

5 The learned Advocate for Respondent No.1 has further submitted that the Petitioner herein had come with a case that the suit property is part of Survey No.227 and CTS No.59 and was now changing nature of his defence by seeking amendment to the written statement. The Gazette copy of the Revenue and Forest Department was issued way back in 16.01.1996. There was no attempt made to rely upon the same by the Petitioner and in fact the Petitioner maintained that his suit premises was part of Survey No.227. He has accordingly submitted that the Writ Petition be dismissed in the light of the observations of the Small Causes Court and costs be imposed.

6 Having considered the submissions, in my view there is no infirmity in the order dated 26.09.2022. The Small Causes Court has upon considering the submissions of the parties held that the Petitioner herein had failed to show due diligence to amend the written statement at the

earliest. The Notification dated 16.01.1996 which now the Petitioner seeks to rely upon, was issued way back in 1996 and no explanation has been given as to why the Petitioner herein is now seeking to rely upon the Notification and/or contend that the suit premises is part of Survey No.239/1. The Petitioner herein had previously attempted to amend the written statement and appeal memo on various occasions. In the order of the Appellate Court dated 12.08.2011, the Appellate Court had recorded the submission that it is not the case of the Appellant/Defendant that the suit premises is situated on land bearing Survey No.239(1). On the contrary it appears from the pleadings of the Defendant that the suit premises is situated on Survey No.227 which is admittedly not the forest land. Accordingly, application for amendment of written statement was rejected.

7 The Appellate Court had thereafter passed an order dated 07.03.2013, in an application taken out by the Petitioner herein for review under Section 114 of the Code of Civil Procedure on the ground that there was a mistake of fact in the judgment and order passed by the Trial Court on 12.08.2011. The Petitioner herein has sought to contend that the Petitioner was not aware as to on which plot of land the suit premises is situated and now as the Petitioner has obtained necessary documents to show that the suit premises is situated on the plot of land bearing Survey

No.239(1) which is a forest land and contrary to the case made out by the Respondent/Original Plaintiff. The Appellate Court upon considering the submissions has held that the Petitioner is seeking for the Court to re-appreciate the evidence which had proceeded on the premise that the plot of land was bearing City Survey No.227 (part) and not City Survey No.239/1. Accordingly, the Appellate Court has held that such reappraisal of evidence is not permissible in an application for review. Further there was substantial delay. On all these grounds, the Review Petition was dismissed.

8 The impugned order has considered the prior orders passed by the Appellate Court on the repeated applications made by the Petitioner herein to amend the written statement and appeal memo. In view of the lack of diligence shown by the Petitioner herein in amending the written statement, the application under Exhibit 81 has been rejected by the impugned order.

9 Considering the prior orders passed by the Appellate Court as well as impugned order, the Petitioner herein has failed to make out any case for setting aside the impugned order of the Appellate Court of Small Causes. It is apparent from the record that the Petitioner herein has failed to show due diligence in amending the written statement, particularly

considering that the Notification which the Petitioner herein seeks to rely upon has been issued way back on 16.01.1996. Though the amendment application can be allowed at any stage of proceedings, the Petitioner herein has to show due diligence for amending the written statement at the earliest, which the Petitioner herein has failed to show.

10 Thus, the Writ Petition is dismissed in view of the above findings. There shall be no order as to costs.

(R.I. CHAGLA, J.)