

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

WRIT PETITION NO.323 OF 2020

Jayesh Dhirajlal Bhatt

..Petitioner

Versus

Salil Mahendra Shah & Ors.

..Respondents

Mr. Jayesh Bhatt – Petitioner in person - present.

Mr. Salil M. Shah – Respondent No.1 in person - present.

CORAM : NITIN W. SAMBRE, J.

DATE : 12th JULY, 2022

P.C.

1. The respondents initiated LE Suit No.07/09 of 2013 on the file of Small Causes Court at Mumbai. The prayer in the said suit was for issuance of decree directing handing over possession by the petitioner/defendant of the suit premises, injunction and determination of mesne profit. In response to the suit claim, petitioner/defendant has filed written statement way back in 2013. After the issues were framed, the respondents/plaintiffs have taken out an application seeking amendment to the plaint, which was rejected by the Trial Court vide order dated 11th December, 2018 passed below Exh.24.

2. The respondents/plaintiffs feeling aggrieved preferred revision before the Small Causes Court, which was allowed vide order dated 22nd October, 2019. As such,

this petition is by the defendant.

3. The contentions are, the respondents/plaintiffs are trying to introduce altogether different case than the one which was set out as a basis for claiming relief of possession. According to petitioner, who appears in person, the written statement was tendered in 2013 and the issues are already framed. As such, trial has already commenced. The petitioner would urge that under provisions of Article 137 of the Limitation Act, the prayer of amendment ought to have been moved within three years. As such, the order impugned is contrary to the aforesaid provisions. His further contentions are, before production of the documents in a suit proceedings Order VII Rule 13 contemplates leave of the Court. If the schedule to the amendment is appreciated, by way of pleadings the respondent is permitted to produce on record the documents that too without leave of the Court and as such, order impugned goes contrary to the aforesaid provisions.

4. The Respondent No.1, who appears in person would support the order impugned, as according to him, by permitting amendment, no prejudice would cause to the petitioner/defendant. He would urge that at the time of production of documents, independent leave of the Court will be sought under Order VII Rule 14 of CPC, which will be decided on its own merits.

5. I have appreciated said submissions.

6. With the assistance of respective parties, I have perused claim of the respondents/plaintiffs in the plaint, the written statement tendered by the petitioner in 2013 and the schedule of amendment which is permitted by the Revisional Court.

7. There appears to be basis in the pleadings in the plaint in support of the amendment which is granted by the Revisional Court. What can be noticed is, the amendment is only in the form of amplifying the pleadings which the respondents/plaintiffs have incorporated in the plaint. As such, it cannot be said that the respondents are trying to introduce altogether new case or trying to cover up *lacunas* which was brought to its notice by the petitioner through written statement tendered in 2013.

8. Rightly so pointed out by the petitioner, who appears in person that the amendment is granted by the impugned order after trial has commenced i.e. the issues are framed, however, the Court below was sensitive to the fact that (a) the parties are yet to tender their evidence i.e. affidavit of examination-in-chief; and (b) there was necessity to permit the amendment in the facts and circumstances of the case and as such, the respondents/plaintiffs were put to condition of payment of cost.

9. In the aforesaid background, it cannot be said that the amendment granted is contrary to the very scheme of Article 137 of the Limitation Act or is by way of passing impugned order the *lacunas* are permitted to be filled in. The petitioner will get an appropriate opportunity to contest the claim which is by amending the pleadings resisting the claim of respondents/plaintiffs.

10. In the aforesaid background, I hardly see any reason which warrants interference in the order impugned.

11. As far as the contentions of the petitioner as regards provisions of order Order VII Rule 14 of the CPC are concerned, submission made by respondents/plaintiffs that an independent proceeding shall be taken out seeking leave of the Court for production of such documentary evidence is accepted.

12. If such proceedings are taken out, this Court expect the Trial Court shall decide the same in accordance with law.

13. With above observations, the petition stands disposed of.

[NITIN W. SAMBRE, J.]