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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7436 OF 2020

Kalpesh Pravinchandra Ved

PETITIONER

VERSUS

M/s Narayandas Mohanlal and Others

RESPONDENTS

.....

Mr. Girish S. Rane, Advocate for the petitioner

Mr. Vinodkumar R. Mundada, Advocate for respondent No.3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner impugns common order passed by learned 6th Joint Civil Judge, Junior Division, Jalgaon below Exhibits-89, 93 and 97 in Regular Civil Suit No. 480 of 2014, thereby allowing the applications filed by defendant No.3 for amendment in his written statement, under Order VI, Rule 17 of the Civil Procedure Code.

2. The petitioner has filed the suit for possession under the Rent Control Act, on various grounds. According to the petitioner – plaintiff, defendant No.3 is a sub-tenant of defendants No.1 and 2. The defendants appeared and resisted the suit, by filing

their written statements. Issues were framed and the plaintiff filed his evidence affidavit. At this stage, three applications i.e. Exhibits-89, 93, and 97 came to be filed by defendant No.3 for amendment in the written statement claiming that he is a tenant and not a sub tenant, after filing the suit and during its pendency he came to know, recently that the plaintiff has obtained possession of various godowns from various persons and the same remained to be pleaded in paragraph No. 9 at the time of filing of the written statement. He, therefore, sought permission to amend his written statement.

3. The applications were strongly opposed by the plaintiff, by filing written say. The Trial Court has allowed the applications. Hence, this petition.

4. Heard learned advocate for the petitioner and learned advocate for respondent No.3. Perused the memo of writ petition, documents annexed with it, the impugned order and the citations relied on by the learned advocates.

5. Learned advocate for the petitioner has assailed the impugned order on the ground that there is absolute lack of due diligence on the part of the defendant, in filing the amendment applications. The applications were filed after commencement of

trial and hence those ought to have been rejected. By relying on *"Archana Ashok Amburle V/s Arpana Shankar Dudham and Others"* 2019 (2) Mh.L.J. 67 and *"Prabhakar Sadashiv Gokhala and Another V/s Ramesh Shankar Ladkat and Others"* 2017 (4) Mh.L.J. 634, he submits that the impugned order is unsustainable.

6. Learned advocate for respondent No.3, on the other hand, supports the impugned order.

7. Perusal of the record indicates that the amendment is in respect of the subsequent events, which defendant No.3 claims to have come to know recently. The Trial Court has held that the amendment would help to decide the real controversy between the parties and to effectively adjudicate the matter on merits. It is held that the amendment would not change the nature of the suit. For the lack of due diligence on the part of defendant No.3, cost of Rs.3000/- is imposed by the Trial Court. By the amendment, defendant No.3 is not withdrawing any admission. He is only taking inconsistent pleas in his written statement, which is permissible in law.

8. In that view of the matter and in view of the settled legal position that amendment needs to be allowed liberally, to avoid

multiplicity of litigation and if it would help the Trial Court to decide the dispute between the parties effectively, the impugned order does not require any interference.

9. In "**Archana Ashok Amburle**" (*supra*), learned Single Judge of this Court has held that due diligence was neither pleaded nor proved before the Trial Court and on that ground the amendment application was rightly rejected by the Trial Court.

10. In "**Prabhakar Sadasiv Gokhale**" (*supra*), learned Single Judge of this Court has held that proviso to Order VI, Rule 17 of the Civil Procedure Code is mandatory.

11. In the case in hand, as is already observed, for lack of due diligence the plaintiff is compensated. Though proviso to Order VI, Rule 17 of the Civil Procedure Code is mandatory, everything depends on the facts of each case. Said decision is rendered in different set of facts and as the present amendment is in respect of subsequent development, the same is rightly allowed by the Trial Court. The citations relied on by the learned advocate for the petitioner are of no use to petitioner.

12. Learned advocate for the petitioner has strenuously urged that, in fact defendant No.3 is a sub-tenant and the amendment proposed by him is not maintainable and the same ought to have

been rejected by the Trial Court. Merit of the amendment cannot be gone into at this stage and the petitioner is entitled to object to the amendment and maintainability of the said amendment at the instance of defendant No.3, at the time of final hearing of the suit.

13. For the aforesaid reasons, there is no illegality or perversity in the order impugned in the writ petition. No case is made out by the petitioner to cause interference in the impugned order, in extraordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE