

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

WRIT PETITION NO. 10009 OF 2022

Rekha Deepak Motwani and another .. Petitioners

Versus

Naseer Khan Roshan Khan and others .. Respondents

Shri Shailendra S. Gangakhed, Advocate for the Petitioners.

Shri S. V. Natu, Advocate for the Respondent Nos. 1 and 2.

The Respondent Nos. 3 to 7 are formal parties.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 16TH JANUARY, 2023.

FINAL ORDER :

. Heard.

2. By this petition the petitioners are challenging order dated 11th August, 2022 passed by the 02nd Joint Civil Judge Junior Division, Aurangabad below Exhibit 147 in R.C.S. No. 388 of 2014, whereby the application filed by the respondents for striking off certain portion from the written statement of the petitioners came to be partly allowed.

3. Rent Suit No. 388 of 2014 was filed by the respondent Nos. 1 and 2 seeking inter alia a decree for eviction. The original defendant Nos. 1 to 5 filed their written statement. In the written statement, it is the case of the original defendants that after expiry of fifteen years and start of ten years period, the defendants had asked the plaintiffs to get the lease deed executed for further period of ten years as per agreement to lease. The said contention has been raised in the background of

agreement to lease executed between predecessors of the petitioners and the respondents wherein the period of lease was for a period of fifteen years initially and thereafter the same was to be revised for further period of ten years at monthly rent of Rs. 7,500/- under same terms and conditions and thereafter with option of renewal of monthly rate as decided and agreed between the parties. During the pendency of the proceedings, the defendant No. 4 expired and the present petitioners came to be impleaded as defendant Nos. 4B and 4D. After being impleaded as legal representatives of the deceased defendant No. 4 on 21st March, 2022 written statement was filed, whereby the legal representatives of the deceased defendant No. 4 set up a case of oral agreement and extension of lease for a further period of ten years. On 14th June, 2022 an application was filed by the respondent Nos. 1 and 2 herein seeking to delete portions from the written statement filed by the petitioners pertaining to the defence of oral agreement and also the defence of non joinder of necessary party. By the impugned order, the Trial Court directed to strike off the pleadings raising defence of existence of oral agreement or oral talks for extension of lease, but permitted legal defence as regards non joinder of necessary party to be retained in the written statement.

4. Learned counsel for the petitioners submits that powers exercised by the Trial Court are not traceable to the provisions of Order VI Rule 16 of the Code of Civil Procedure (for short "Code"), which enables striking off the pleadings and the Trial Court cannot, in exercise of inherent powers U/Sec. 151 of the Code pass the impugned order. He would further submit that there is no inconsistency between the defence taken by the

predecessor in interest and by the petitioners as legal representatives and as such the impugned order deleting the pleadings as regards the defence taken up by the petitioners is erroneous. In support of his contentions, he has relied upon the decisions of the Apex Court in the case of **My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and others** reported in **2022 SCC OnLine SC 1063** and in the case of **Abdul Razak (Dead) through L.Rs. And others Vs. Mangesh Rajaram Wagle** and others reported in **(2010) 2 SCC 432**.

5. Learned counsel for respondent Nos. 1 and 2 on the other hand would support the impugned order and would submit that the petitioners having being impleaded as legal representatives of the deceased defendant cannot take up a defence which has not been taken up by the predecessor of the petitioners.

6. I have considered the rival submissions of the parties.

7. As per the provisions of Order XXII Rule 4 of the Code, upon the death of one of the surviving defendants, the legal representatives of the deceased defendant are required to be made a party. Sub Rule 2 of Rule 4 of Order XXII of the Code provides that any person who is so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

8. In the present case, the petitioners have been impleaded as legal representatives of the deceased defendant and the defence taken by the Petitioners is required to be in consonance with his character as legal representative, which implies that the petitioners as legal representatives cannot take up a defence as

regards existence of an oral agreement which was personal to the predecessor of the legal representatives. Learned counsel for the petitioners submits that the defence of oral agreement taken up in the written statement is as regards the oral agreement with these petitioners and not with the predecessor of the petitioners. I am not inclined to accept this submission as the plain reading of the written statement filed by the petitioners would show that the Petitioners have taken up defence of existence of oral agreement between the predecessors and the Respondents. There is no specific averment that there was any oral agreement between the petitioners and the landlords i. e. the respondent Nos. 1 and 2 and it is pursuant to that oral agreement between the petitioners and the respondents herein the period of lease has been extended.

9. As regards powers of the Trial Court in respect of striking off pleading is concerned, the provisions of Order VI Rule 16 read with Section 151 of the Code empowers the Trial Court to strike out the pleadings. As the written statement is not in conformity with the provisions of Order XXII Rule 4(2) of the Code, in my opinion the power was rightly exercised by the Trial Court under Order VI Rule 16 read with Section 151.

10. As regards the decision of the Apex Court in the case of **My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and others** (supra) relied upon by the petitioners is concerned, the said decision deals with the powers U/Sec. 151 of the Code and it has been observed that the Court is free to exercise the powers U/Sec. 151 of the Code for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way

in conflict with what has been expressly provided in the code and against the intentions of the legislature. In the present case, the power which has been exercised by the Trial Court is consistent with the provisions of Order VI Rule 16 of the Code and hence it cannot be said that the exercise of inherent powers is in conflict with the express provisions of the Code and against the intentions of the legislature.

11. As regards decision in the case of **Abdul Razak (Dead) through L.Rs. And others Vs. Mangesh Rajaram Wagle** (supra) in the facts of that case, wherein additional written statement was filed by the legal representatives without any objection from the respondents and an application for striking out the additional written statement was taken after a gap of three years six months, this Court examined the issue of delay. It was held in para No. 17 of the said decision that Court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the Court.

12. In the present case, the application for striking off the portions of the written statement has been made promptly and there is no objection as far as delay aspect is concerned. Perusal of the impugned order shows that the Trial Court has satisfied itself that the petitioners cannot be permitted to raise the defence of existence of oral agreement and as such it can be said that the Trial Court is satisfied that permitting retention of pleading would be amount to prejudicing fair trial. Learned counsel for the petitioners has invited the attention of this Court to para No. 29 of the said decision which refers to the decision of

the Apex Court in the case of **Jagdish Chander Chatterjee Vs. Sri Kishan reported in (1972) 2 SCC 461**. It is clear from the said paragraph that the heirs and the legal representatives are permitted to urge all contentions which the deceased could have urged except only those which were personal to the deceased. In the present case the predecessor of the petitioner has not set up any defence in respect of existence of oral agreement and the perusal of the written statement shows that the pleadings as regards oral agreement are attributable to the deceased and are not personal to the legal representatives. In my view, the decisions relied by the learned counsel for the petitioners does not assist the case of the petitioners.

13. For the reasons stated above, there is no merit in the writ petition. Writ petition is accordingly dismissed.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23