

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3341 OF 2023

Mandar Pandit Kulkarni ... Petitioner

V/s.

Balasaheb Hiralal Zad and Anr. ... Respondents

Mr. Pradeep Thorat a/w Adv. Mrunal Surana i/b Mr. Vaibhav Kulkarni, Advocate for the Petitioner.

Mr. Siddharth Wakankar a/w Adv. Aishwarya Bapat, Advocate for Respondent Nos.1 and 2.

CORAM : RAJESH S. PATIL, J.

DATED : 3 OCTOBER, 2023

PC.:

1. Heard. Rule. Rule made returnable forthwith by consent of the parties.
2. This Writ Petition challenges the Judgment and Order dated 9th December, 2022 passed by the Court of Small Causes, Pune, whereby, the Application for amendment of the plaint filed by the present petitioner (Original Plaintiff) has been rejected.
3. The Petitioner had filed suit under section 33(1)(c) of the Maharashtra Rent Control Act, being Suit No.291 of 2018 against the Respondents / Landlord, seeking therein permanent injunction from disturbing the plaintiff from the use of the suit premises for

carrying out business and also for carrying out the tenanted repair in the suit premises. During the pendency of the suit in the month of June 2019 an Application (Exh-24) was preferred by the plaintiff for amendment of the plaint. The amendment was sought in Paragraph No.2 of the plaint and so also to add a prayer in the plaint. The said amendment sought declaration to the effect that the plaintiff is the 'tenant' of the suit premises, of the defendant.

4. The said Application (Exh-24) was heard by the Additional Judge of Small Causes Court at Pune and by his order dated 9th December, 2022 he rejected the Application on the ground that the landlord has already filed of suit on the ground of trespassing and for possession of the suit premises, being Special Civil Suit No.230 of 2019.

5. I have heard learned counsel of both the sides. I have gone through the contents of the documents on record.

6. It is a matter of record that the suit filed by the Petitioner (Original Plaintiff), is under section 33(1)(c) of the Maharashtra Rent Control Act. In the said suit a specific averment is made in Paragraph No.2 to the effect that a plaintiff is a monthly tenant as contemplated under sections 7(15)(d)(ii). So also it is specifically averred the relationship of the plaintiff with the Original tenant - Mr. Vasant Laxman Kulkarni. It is also further stated that Mr. Vasant Laxman Kulkarni was married and his wife has already died so also Mr. Vasant Laxman Kulkarni has also died. Mr. Vasant Laxman Kulkarni does not have any children. The present plaintiff has claimed to be the nephew of Mr. Vasant Laxman Kulkarni. As

father of the present plaintiff is the real brother of Mr. Vasant Laxman Kulkarni. It is also stated that after the death of Mr. Vasant Laxman Kulkarni the present plaintiff was staying along with the wife of Mr. Vasant Laxman Kulkarni being, a family member till her death, she being wife of his Uncle. It is also stated that the present plaintiff was carrying on the tailoring business in the suit premises and the Original tenant was also carrying on the business of tailoring in the suit premises. In my view all that is sought in the amendment Application is to add a prayer of declaration as tenant. Such a relief can be sought by filing a suit in Small Causes Court. As the plaintiff has already filed a suit in Small Causes Court, on the ground that he is a tenant after the death of Original tenant under section 7(11). According to me, a case is made out to allow the amendment Application. Prayer made in the Amendment Application should have been allowed by the Small Causes Court, Pune.

7. In the light of the same, the Interim Application No. Exh-24 filed in Small Causes Court, Suit No. 291 of 2018, is hereby allowed the impugned Judgment and Order dated 9th December, 2022 is quashed and set aside.

8. Amendment to be carried out in the plaint within a period of three weeks from today. The Respondent to file additional written statement to the said amended plaint within three weeks thereafter. The matter can thereafter proceed further for framing issues.

(RAJESH S. PATIL, J.)