



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3898 OF 2023

Una Fernandez.

...Petitioner.

Versus

Vimla Soares.

...Respondent.

*Mr. Aseem Naphade, Mr. Ameet Mehta, Ms. Monica Jagtap, Ms. Akanksha Mishra and Pravin Rhatwal i/b M/s. Solicx Lex for the petitioner.
Mr. G. Shah, Mr. Pranav Chan i/b Mahesh Menon & Co., for the respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : December 5, 2023.

P. C. :

1. By this petition filed under Article 227 of the Constitution of India, the order dated 12th October 2022 partly rejecting the petitioner's application for amendment of written statement is sought to be challenged.

2. The suit being R.A.E. Suit No.1061 of 2019 has been instituted against the petitioner seeking a decree of eviction on the ground of *bona fide* requirement, change of user and nuisance. In the said suit, petitioner filed his written statement on 14th November 2019. In paragraph 6 of the written statement, it is pleaded that *the defendant's eldest son Clarence Fernandes is working in Singapore and*

younger son Keith Fernandes is working in Dubai and they both regularly pay visits once or twice a year. In paragraph 11, it is pleaded that the petitioner's eldest son Clarence has not migrated to Singapore but is only working there and pays regular visits to the petitioner in the suit premises and that younger son Keith has not migrated to Dubai but is only working there and he regularly pays visits to the petitioner at the suit premises at least once in three months.

3. By application for amendment, various amendments were sought, however, before this Court challenge is confined only to the rejection of proposed amendment of deletion the words "at least one in three months" occurring in paragraph 11 with regard to the visits of the younger son Keith. By the proposed amendment, the words "at least once in three months" are sought to be replaced by words "regularly", which has been rejected by the trial Court on the ground that same amounts to withdrawal of admission.

4. Learned counsel appearing for the petitioner submits that it was the case of defendant that his sons were regularly paying visits to him and by the proposed amendment the admission is sought to be explained inasmuch as the words "at least in three months" are sought to be replaced with the word "regularly". In support of his submissions, he relied upon the decision in *Akshaya Restaurant v. P.*

Anjanappa [1995 Supp (2) SCC 303].

5. *Per contra* learned counsel appearing for the respondent submitted that in fact there is an admission in paragraph 6 of written statement that the sons of defendant were paying visits to the defendant regularly once or twice a year. He would further submit that by deletion of the words “at least once in three months” and replacing the same with the word “regularly”, an admission is sought to be withdrawn and not explained.

6. Considered the submissions and perused the impugned order.

7. The suit has been filed on the ground of *bona fide* requirement, change of user and nuisance. In the context of *bona fide* requirement of the parties, the issue of comparative hardship will also have to be considered. In the present case, petitioner had pleaded in paragraph 11 that as far as his eldest son is concerned, he is working in Singapore and pays regular visits to the petitioner. Further, as regards his younger son, it is pleaded that the said son regularly pays visits to the the petitioner at least once in three months. By this specific admission, the visit of the son has been specified to be at least once in three months.

8. While considering the issue of comparative hardship, the

requirement of the family members of the petitioner vis-a-vis visit of of the sons to the suit premises will be an issue in consideration. Viewed from this angle, pleadings in the written statement which amount to an admission that as far as the younger son is concerned, he visits the suit premises once in three months will assume importance. I am, therefore, not inclined to accept the submission of learned counsel for the petitioner that by replacing the words "at least once in three months" with the word "regularly", the admission is sought to be explained. On the contrary, by replacing the said words, there is no explanation tendered. Rather, an admission that visits of younger son is only once in three months is sought to be withdrawn and replaced with the word "regularly", which has completely different connotation. There is no dispute about the proposition of law laid down by the Apex Court in *Akshaya Restaurant (supra)*, that an admission can be explained. But as rightly pointed out by learned counsel for the respondent, by the proposed amendment the admission is sought to be withdrawn and not explained.

9. In that view of the matter, petition is devoid of merits and same is accordingly dismissed.

[Sharmila U. Deshmukh, J.]