

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7845 OF 2023

Devilal Mohanlal Bohra ... Petitioner
Versus
Chandrakant Lalji Chheda ... Respondent

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Mr. Mayuresh Modgi for the Petitioner.
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CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 28, 2023.

P. C. :

1. Heard learned counsel appearing for the Petitioner.
2. The challenge in the petition is to the impugned order dated 28th March, 2022, allowing the respondent-plaintiff's application for filing of additional affidavit of evidence. Learned counsel appearing for the Petitioner submits that at the stage of final arguments, an application was moved for adducing additional evidence. He would further submit that there is no material produced on record which demonstrate that in spite of due diligence the information which is sought to be brought by way of an additional evidence could not be procured by the respondent-plaintiff. In respect

of the submission he relies upon the decision of the Madras High Court in the case of **Central Bank of India vs. Rama Granites** reported in (2006) 1 MLJ 462.

3. Considered the submissions.

4. Regular Civil Suit No.1134 of 2022 was instituted by the respondent-landlord against the petitioner-tenant for eviction. The affidavit of evidence of the plaintiff was filed on 11th October, 2022 and thereafter, the Petitioner-defendant led his evidence on 8th September, 2022. An application was moved on behalf of the plaintiff for leading additional evidence. Perusal of the application indicates the submission of the plaintiff that the plaintiff at that time got information about permanent residential address of the defendant where he had shifted alongwith his family and specific averments are made in the paragraph 2 of the application that as the defendant had changed his residential address and obtained registration of the vehicle on the new residential address, he received the information from the RTO Portal.

5. It is further stated that after getting knowledge of the new residence, the plaintiff himself came and took photographs-of the

flat acquired. The copy of extract of the RTO portal as well as the photographs are stated to be annexed to the application. The plaintiff has stated in the application that the information was received by him on 4th March, 2021 and, as such, the application was filed for leading additional evidence.

6. The suit is filed under Section 16 (1) (10) of the Maharashtra Rent Control Act, 1999 for eviction of Respondent-tenant. A specific case which has been put forward by the plaintiff in the application for leading additional evidence is that the information was received by him on 4th March 2021. The application in question has been moved under Section 151 of the CPC which deals with the inherent powers of the Court. The Trial Court considering the facts of the case, has held that the additional evidence which is supposed to be adduced is vital in facts of the case and as such, permitted the plaintiff to adduce evidence. The objection is that there is no due diligence exercised by the plaintiff in obtaining the information. The plaintiff in his application has made a specific averments that on 4th March, 2021, he received the information. Once the initial burden is discharged by the plaintiff that the information came to his knowledge on 4th March, 2021 in opposing the application it was for

the Petitioner to at least make a submission that the said information was within the knowledge of the Petitioner or could have been acquired by him by exercising due diligence. There is no such submission which has been made and on the contrary the application is opposed on the ground that the defendant has not purchased any new vehicle and therefore the submission of the plaintiff is total invalid and incorrect.

7. Learned counsel for the Petitioner submits that the suit premises in question is a shop and as such a residential premises is acquired the same is not relevant to the issue. As already indicated, during the trial, the defendant is at liberty to cross-examine the plaintiff on the additional evidence adduced and the relevancy of the additional evidence can be the subject matter of the trial.

8. The trial Court while deciding that the application has arrived at a satisfaction that the evidence which is proposed to be adduced is vital for the effective adjudication of the dispute and as such in exercise of powers the Article 227 of the Constitution of India, I do not find any reason to interfere with the discretion exercised by the trial Court. The reliance which is placed by the learned counsel

for the Petitioner on the decision of the Madras High Court is not binding on this Court.

9. In that view of the matter, the writ petition is dismissed.

(Sharmila U. Deshmukh, J.)