



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6598 OF 2021

Pushpalata Ramdas Naik

...Petitioner

Versus

Chandrabhan Rangnath Raut

...Respondents

Adv. Bhooshan R. Mandlik for the Petitioner.

Adv. R. M. Haridas a/w Adv. Sayali Patil holding for Adv. Vivek Salunke
for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 12, 2023

P. C. :

1. Heard.

2. The Challenge in the Petition is to the order dated 30th March, 2012 passed by the Appellate Court below Exhibit 101 permitting the amendment of the Written Statement filed by the Respondent.

3. The facts of the case are that the Eviction Suit was instituted by the Petitioner in the year 2001 which came to be dismissed as against which in Appellate proceedings, the Appellate Court decreed the suit. In that proceedings, an Application under Order 41 Rule 27 of CPC filed by the Respondent was pending. Vide order passed in Civil Revision Application No. 150/2017, this Court remanded the matter upon a concession given by the Respondent therein i.e. the Petitioner herein for setting aside the

Judgment of the Appellate Court. This Court directed the Appellate Court to decide the Appeal expeditiously. Subsequently, on 26th February, 2020, an Application was moved by the Respondent-Defendant for amendment of the written statement for incorporating a pleading in the written statement that during the pendency of the proceedings, the Petitioner by registered Leave and License Agreement dated 7th February, 2003 has given the premises on the ground floor, first floor and two other premises and the premises on first floor was given to resident of Nagaland and to third parties on rent/ leave and license basis.

4. By the impugned order, the Appellate Court allowed the Application by observing that, if the proposed amendment is allowed, it will not introduce a new case and that the proposed amendment is based on certain facts which have taken place during the pendency of the Appeal.

5. Heard Mr. Mandlik, learned counsel for the Petitioner and Mr. Haridas, learned counsel for the Respondent.

6. Learned counsel for the Petitioner submits that based on the concession which was given during the hearing of the Civil Revision Application before this Court, the matter was remanded. He submits that the Application filed under Order 41 Rule 27 of the CPC is pending for

consideration in which similar contentions were raised and as such, there was no necessity of preferring amendment to the written statement. He points out that the Application under Order 41 Rule 27 was filed in the year 2016 and as such, the Respondent had knowledge about the facts which are sought to be introduced by way of proposed amendment. He submits that the present Application for amendment has been filed in the year 2020 and it is necessary for the Respondent to plead and show due diligence before the amendment could be allowed.

7. *Per contra*, learned counsel for the Respondents submits that the pleadings are necessary for the effective adjudication and the delay has been compensated by imposing cost on the Respondents.

8. Considered the submissions and perused the record.

9. The admitted position is that, the Application under Order 41 Rule 27 for production of the document in the form of additional evidence is pending for consideration before the Appellate Court. This Application was filed in the year 2016 and as such, the Respondent was having knowledge of subsequent event of the other premises being handed over on leave and license basis to third parties. The proposed amendment to the written statement is sought by way of Application filed on 26th February, 2020 as such, there is a delay in filing of the application for

amendment of the written statement. As held by the Apex Court in the case of *Life Insurance Corporation Of India vs Sanjeev Builders Private Limited*, [2022 LiveLaw (SC) 729] delay per-se cannot be a ground to reject the amendment application. It also needs to be noted that in the present case, a decree of eviction has been sought and one of the grounds for eviction is reasonable and bonafide requirement of the landlord. Viewed from this aspect the availability of the other premises and letting out the same to the third parties are facts which are necessary for effective adjudication of the issue as regards the bonafide requirement of the landlord. For the purpose of production of the document as sought under Order 47 Rule 27 of CPC, necessary pleadings are required in the written statement. No doubt the Application could have been better drafted. However, what is required to be noted is that the proposed amendment is necessary to decide the issue effectively.

10. In view of the matter, I am not inclined to interfere with the impugned order. The Application for amendment was allowed subject to payment of cost Rs. 3,000/- and no fault can be found in the impugned order. As such the Petition fails and disposed of.

(SHARMILA U. DESHMUKH, J.)