

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.6069 OF 2021

Vinod Kantilal Vyas

...Petitioner.

V/s.

The State of Maharashtra & Others.

...Respondents.

Ms. Ratna Jaiswal i/b Ms. Urshita Jain for the Petitioner.

Mr. P. P. Pujari, AGP for the Respondent-State.

Mr. Atul Damle a/w. Mr. Rohan Mirpure, Mr. Viraj Jadhav, Mr. Chinmaya Acharaya i/b Mr. Kevin Pereira for Respondent Nos.2, 3 and 4.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 29th NOVEMBER, 2023.

P. C.:

1. By this petition the challenge is to the order dated 28/7/2022 passed by the trial Court rejecting the petitioner's application for permission to file additional written statement.

2. In RAE Suit No.33/43/2010 an application came to be filed below Exhibit 67 by the petitioner, who is defendant No.2 seeking permission to file additional written statement. The Application was filed on 1/4/2021 and it was contended that earlier the written statement had been filed in the year 2010 itself. It was further contended that after filing of the

suit defendant No.2 has paid all dues which is evident from the the rent receipts issued by respondent-plaintiff. On this basis defendant No.2 sought permission to allow him to bring receipts on record by filing additional written statement.

3. Heard Ms. Ratna Jaiswal for the petitioner, Mr. P. P. Pujari, AGP for the respondent-State and Mr. Atul Damle, Senior Advocate for respondent Nos.2, 3 and 4.

4. Learned counsel for the petitioner submits that admitted position is that the plaintiff has filed affidavit of evidence and he is also cross examined by defendant No.2 She further submits that during cross examination as the rent receipts did not form part of the written statement, the same were not produced during the cross examination to confront the witness for the plaintiff. She would further submit that the trial Court has rejected the Application by applying the provisions of Order 6 Rule 17 of Civil Procedure Code, which is inapplicable. In support of her contention, she relies upon the decision of the Apex Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr., Civil Appeal No.5909 of 2022 (Arising Out of SLP (C) No.22443 of 2019)*

5. Considered the submissions and perused the record.
6. The admitted position is that the cross examination by the defendant No.2 of the plaintiff's witness is already over. The submission of learned counsel for the petitioner that the witness of the plaintiff could not be confronted with the documents as the same did not form part of the written statement is bereft of any merit. For the purpose of confronting the witness, it is not necessary that documents should form part of the written statement. Documents can be produced during the cross examination for the purpose of confronting the witness and these documents are not required to be listed or pleaded in the written statement. It appears that having lost an opportunity to bring the rent receipts on record during the cross examination, the application is now sought to be pressed.
7. Learned counsel for the petitioner submits that prior to the cross examination being concluded application was filed, however, the position now is that cross examination of the plaintiff's witness is already over.
8. The Application has been filed for permission to file additional written statement and as such is governed by the provisions of Order 8 Rule

9 of CPC. The provision provides that no pleadings subsequent to written statement of the defendant other than by way of defence to set off or counter claim shall be presented except by leave of the Court and upon such terms as the Court thinks fit. Present application has been filed under said provision. However there is no authority for the proposition that for the purpose of filling up lacunae in the evidence, additional written statement can be placed on record. Trial Court while rejecting the Application has relied upon Order 6 Rule 17 of CPC. Application under Order 8 Rule 9 of CPC and Order 6 Rule 17 of CPC are contextually different. Although the reasoning given by trial Court may not be sustainable, application is without any merit and has been rightly rejected by the trial Court

9. Reliance on the decision in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited (supra)* is misplaced as in the said decision, the Apex Court has considered the issue as regards amendment of the pleadings.

10. In light of the above, the Petition lacks merit and is dismissed.

(SHARMILA U. DESHMUKH, J.)