

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10979 OF 2022

Shapoorji Pallonji & Company Pvt Ltd,

A company incorporated under the provisions of the Companies Act, 1956, having its registered office at Shapoorji Pallonji Centre, 41/44, Minoo Desai Road, Colaba, Mumbai – 400 005.

.. Petitioner

Versus

The New India Assurance Company Ltd.,

A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at New India Assurance Building, 87, M.G. Road, Fort, Mumbai – 400 001.

.. Respondent

-
- Mr. Arun Siwach a/w Ms. Priyanka Mitra and Mr. Karan Khetani i/by Cyril Amarchand Mangaldas for Petitioner
 - Mr. V.Y. Sanglikar for Respondent
-

CORAM : MILIND N. JADHAV, J.

Reserved on : FEBRUARY 06, 2023

Pronounced on : JUNE 05, 2023.

JUDGMENT:

1. By the present Writ Petition, Petitioner has prayed for the following reliefs:-

- “(a) that this Hon’ble Court be pleased to issue Writ of Certiorari or a Writ in the nature of Certiorari or any other writ order or direction under Article 226 of the Constitution of India to call for the records in relation to the Orders dated 08.07.2022 (Exh. “A”) and 22.07.2022 (Exh. “B”) and after examining the legality or validity thereof quash and set aside the impugned orders;
- (b) that this Hon’ble Court be pleased to issue Writ of Certiorari or a Writ in the nature of Certiorari or any other writ order or direction under Article 226 of the Constitution of India to call for

the records in relation to the impugned show cause notice dated 29.07.2022 (Exh. "C") and after examining the legality or validity thereof quash and set aside the impugned show cause notices under Form 'A' and 'F' of the Act."

2. Order dated 08.07.2022 allows the amendment application filed by Respondent in the proceedings before the Estate Officer under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, **"the said Act"**); order dated 22.07.2022 directs issuance of fresh show-cause-notice to the Petitioner; show-cause-notice dated 29.07.2022 has been issued to the Petitioner. These are under challenge.

3. The subject premises is Flat No. 45, Garage No. 3 along with Room No. 1, 3 and 5 in the building known as Mayfair Gardens, Little Gibbs Road, Malabar Hill, Mumbai – 400 006. Petitioner is tenant of the subject premises since 1940. In 1962, Respondent acquired the building including the subject premises from its predecessor-in-title by indenture of conveyance and Petitioner's tenancy was attorned in favour of Respondent. The said Act was enacted in 1971. Pursuant to enactment of General Insurance Business (Nationalization) Act, 1972, Respondent was converted into a Government Company within the meaning of Section 3 read with Section 617 of the Companies Act, 1956.

4. On 09.02.2001 Respondent issued first termination notice

acknowledging that Petitioner was a monthly tenant and called upon the Petitioner to vacate the subject premises within one month from the date of the said notice. Petitioner replied to the notice seeking reasons for issuance of the same. On 18.02.2002, Respondent issued second termination notice stating the reason that the subject premises were required for accommodating the increasing staff of the Respondent. On March 28.02.2002, Petitioner replied to the notice refuting its contentions.

5. In 2003 Respondent filed a composite application under Sections 5 and 7 of the said Act read with the Rules thereunder before the Estate Officer seeking order of eviction against Petitioner to vacate possession of the subject premises and order for payment of damages under Section 8 of the said Act along with interest thereunder till vacant and peaceful possession of the subject premises was given along with costs. On 08.06.2004 Petitioner filed its written statement and contested the application. Witness Action commenced. On 07.06.2017 affidavit of evidence of Respondent's witness was filed. Cross-examination of Respondent's witness i.e. Mr. Ratan Kumar Purohit commenced on 14.12.2018 and was carried upto 13.06.2019 and remains incomplete as on date.

6. On 21.04.2022 Respondent filed an amendment Application seeking enhancement of the claim post-commencement of trial.

Petitioner filed its reply resisting the amendment application on various grounds. By order dated 08.07.2022, the Estate Officer allowed the amendment application filed by the Respondent. By further order dated 22.07.2022, the Estate Officer directed issuance of fresh show-cause-notices under the said Act. On 29.07.2022 fresh show-cause-notice was issued to the Petitioner. The twin orders dated 08.07.22 and 22.07.22 along with the fresh show-cause-notice dated 29.07.2022 are impugned in the present petition.

7. Mr. Siwach, learned Advocate for Petitioner (original opposite party before the Estate Officer) would submit that the impugned order erroneously holds that the fundamental principles of the Civil Procedure Code (**CPC**) are not applicable to the proceedings before the Estate Officer. He would submit that it is settled law that fundamental provisions of the CPC are applicable to the proceedings before the Estate Officer considering that the CPC being the procedural law is an embodiment of natural justice and fair play. He would therefore submit that the finding returned by the Estate Officer that he is not bound by the provisions of the CPC is legally erroneous and unsustainable. He would submit that the impugned order dated 08.07.2022 is vitiated by legal and jurisdictional errors and infirmity since the provisions of Order 6 Rule 17 of the CPC are mandatory in nature. If a party files an application seeking amendment post-

commencement of the trial, it is incumbent upon such party to show that in spite of due diligence on its part it could not have raised the matter before commencement of the trial. In the present case, he would submit that the amendment application dated 21.04.2022 seeking an enhanced claim post-commencement of trial is filed much belatedly and therefore the liberal approach adopted by the Estate Officer in allowing the amendment at this stage cannot be taken. He would submit that perusal of the amendment application would reveal that no sufficient cause is pleaded therein and / or case of due diligence has been pleaded as prescribed in law. He would submit that the only averment made in the application is that the amendment is necessary without giving any supporting reasons. He would submit that while allowing the amendment application, the Estate Officer has merely observed that rejecting the amendment application would mean shutting out the Respondent from relying on a scientific basis for their claim. He would next submit that by virtue of the amendment, Respondent is attempting to better and improve its case after 19 years of filing the composite application under trial and such an improvement after enormous lapse of time cannot be allowed. He would submit that in any event considering that the original composite application filed by the Petitioner is at the stage of cross-examination of the Respondent's witness and therefore cannot be allowed at this stage. He would submit that the relief allowed by the Estate Officer

directing issuance of fresh show-cause-notices for enhancement after 19 years of filing the composite application was not even prayed for by the Respondent in the amendment application. He would submit that the fresh show-cause-notice issued by the Estate Officer is barred by limitation in as much as as per Article 67 of the Limitation Act, 1963, the proceedings concerning recovery of possession are to be instituted within 12 yeas of determination of tenancy and further in terms of Section 27 of the Limitation Act, the Petitioner has obtained a substantial right over the subject premises. In support of the above submissions, Petitioner has referred to and relied upon the following decisions:-

- (i) *Nandini J. Shah & Anr. Vs. Life Insurance Corporation*¹;
- (ii) *Vidyabai Vs. Padmalatha*²;
- (iii) *Maratha Market People's Co-op Bank Ltd., In re*³,
- (iv) *Kalu Ram Vs. NCT of Delhi*⁴

8. PER CONTRA, Mr. Sanglikar, learned Advocate for the Respondent has drawn my attention to the Petition and contended that the Petition challenges the order dated 08.07.2022 allowing amendment to the claim for damages. He would submit that Petitioner is the opponent in case No. 12 and 12A of 2003 filed by the Respondent before the Estate Officer. Case No. 12/03 is for eviction

1 2008 SCC OnLine Bom 114

2 (2009) 2 SCC 409

3 2019 SCC OnLine Bom 32

4 (1976) 3 SCC 407

whereas Case No. 12A/03 is for damages for unauthorized occupation by the Petitioner. Both the cases arise out of the composite application dated 16.01.2003 seeking eviction and damages. Admittedly both cases are pending over 20 years before the Estate Officer. He would inform that affidavit of evidence of Respondent's witness was filed on 07.06.2017 and his cross-examination is still incomplete. He would submit that the amendment has been rightly allowed by the Estate Officer by holding that Section 8 of the said Act limits applicability of the CPC to the cases under the said Act. He would submit that the amendment sought by the Respondent does not amount to improving the case of the Applicant before the Estate Officer as damages have to be assessed as per Rule 8 of the Public Premises Rules, 1971. He would next submit that the amendment sought for and allowed by the Court cannot in any manner cause any prejudice to the Petitioner as the Estate Officer has determined that the Petitioner shall be given a fair opportunity to contest the enhancement of claim in the trial. He would submit that merits or correctness of the case pleaded in the amendment application cannot be considered for deciding the amendment application itself. He would further submit that the Limitation Act does not apply to the proceedings under the said Act as held by this Court vide order dated 23.07.2012 in the case of Saurashtra Cement Ltd Vs. National Aviation Co of India Ltd & Anr. in Writ Petition No. 8312 of 2010. He would next submit that the

Division Bench of this Court in its order dated 22.02.2018 in OS Writ Petition (L) No. 21 of 2018 in the case of G E T & D India Ltd Vs. The New India Assurance Company Ltd & Anr. has upheld an identical amendment which has been further upheld by the Supreme Court in SLP(C) No. 10690 of 20918. He would therefore submit that the present Petition be dismissed.

9. I have heard Mr. Siwach, learned Advocate for the Petitioner and Mr. Sanglikar, learned Advocate for Respondent and with their able assistance, perused the pleadings of the case. Submissions made on behalf of the parties have received due consideration of this Court.

10. At the outset, it is seen that the composite application filed before the Estate Officer in the year 2003 in so far as the issue relating to claim for damages is concerned in paragraph No. 11 thereof states as under:-

"11. The Applicants say that the building "Mayfair Garden" is situated at Malabar Hill in a posh locality and is in the elitist area of the Urbs de prima i.e. Mumbai City - all the Elitist population of the city resides there. The valuers have the market rent damages at Rs. 4,75,950/- p.m. of the disputed premises covering built-up area 3540 sq.ft., Garage No. 3, room nos. 1, 3 and 5 attached to the disputed flat. It is submitted that the present market value of the disputed flat as per the valuation mode provided by the Stamp Duty Ready Reckoner and the valuation of the flats in Mumbai 2002 as prepared by the Govt. valuers comes to the same extent.

As per the valuer, the market value of the disputed flat - and the monthly return based thereon as Bank rate works out accordingly.

*Damages @ Rs. 4,75,950/- p.m. from Rs. 71,39,250.00
1.4.2002 to 30.6.2003
U/s 7(2) of the PP Act 1971*

Interest @ Bank rate of 9% p.a. from Rs. 3,74,816.62

*1.4.2002 to 30.06.2003
u/s. 7(2A)*

Total

Rs. 75,14,060.62

11A. BMC property taxes and large area taxes have to be borne and paid by the OPs separately.

11. It is seen that the Respondent in the application has stated that as per the Valuer, the market value of the disputed flat and the monthly return based thereon as bank rate works out to claim damages at the rate of Rs. 4,75,950/- per month from 01.04.2002 to 30.06.2003. If the amendment application is not allowed, it would mean that the Respondent (original applicant) will have to restrict its damages to the rate mentioned in paragraph No. 11 of the composite application. Though in paragraph No. 14, it is averred that Petitioner is liable to pay damages at the rate of Rs. 4,75,950/- per month for the subject premises from 01.04.2002 until receiving vacant and peaceful possession of the subject premises, it cannot be construed that the Petitioner will be liable to pay the fixed rate of damages on the basis of the market value contemplated at the time of filing of the composite application on 16.01.2003. It would be pertinent to refer to Rule 8 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 in this regard. Rule 8 reads thus:-

"R. 8. Assessment of damages :- In assessing damages for unauthorized use and occupation of any public premises the Estate Officer shall take into consideration the following matters, namely :-

(a) The purpose and the period for which the public premises were in unauthorized occupation;

- (b) *The nature, size and standard of the accommodation available in such premises;*
- (c) *The rent that would have been realized if the premises had been let on rent for the period of unauthorized occupation to a private person;*
- (d) *Any damage done to the premises during the period of unauthorized occupation.*

11.1. Perusal of the above Rule clearly shows that the Estate Officer is mandated to take into consideration the purpose and the period for which the public premises were in unauthorized occupation; the nature, size and standard of the accommodation available in such premises and the rent that would have been realized if the premises had been let on rent for the period of unauthorized occupation to a private person along with the damages done to the subject premises.

12. Admittedly, the present case for eviction and damages has remained pending since 2003 before the Estate Officer. The proceedings before the Estate Officer is a composite case not only for seeking eviction but also for seeking damages. Applying the contents of Rule 8 to the present case and the application made for seeking amendment, it cannot be stated that the said amendment should not be allowed. The rent that would be payable / realizable if the subject premises had been let on rent for the period of unauthorized occupation to a private entity cannot be assumed or taken to be a constant for the entire period of unauthorized occupation in the present case assuming that the Applicants before the Estate Officer

succeed in their case for eviction. With the passage of time undoubtedly the rent would increase and escalate as also the market value. The Respondent therefore filed the amendment application placing reliance on a fresh valuation report showing and giving the enhanced rent between 2003 and 2021 which is seen on perusal of the Application. Perusal of the impugned order reveals that though the amendment has been allowed by the Estate Officer, it does not *ipso facto* mean that the case of the Respondent seeking damages in respect of the amended value of the rent has been allowed. It is clear that merits and decision on the proposed amendment cannot be decided at the stage of considering the application for amendment. For that Petitioner has been given an opportunity to contest the amendment and file its additional written statement. Needless to state that Petitioner shall also be entitled to lead additional evidence on the same. There is no prejudice caused to the Petitioner because of this. The contention of the Petitioner that by virtue of the amendment, the Respondent has improved its case after commencement of trial is not very well founded. As noted earlier, when the composite application was filed in January 2003, the Applicant had relied upon the Valuer's report upto June 2003. The long pendency of the subject case cannot be the reason for rejecting the amendment application. In fact, considering the provisions of Rule 8 of the Public Premises Rules, 1971 and the factors which are mentioned therein to be considered for

assessment of damages, the grant of amendment in the facts and circumstances of the present case is necessary. The Estate Officer has given reasons in paragraph Nos. 6 and 7 of the order dated 08.07.2022 allowing Respondent's application for amendment. Paragraph Nos. 6 and 7 are reproduced below for reference:-

"6. (i) These cases are summary in nature even though for one reason or other the above cases are pending since 2003.

(ii) C.P.C. has limited application as provided under section 8 of the P.P. Act and principle of natural justice will apply to above cases.

(iii) I do not think Applicants are improving their case by seeking proposed amendment, as long pendency of above cases cannot be denied the Applicants filed application for amendment after waiting for 18 years.

(iv) Rule 8 of Public Premies Rules, 1971 lays down the factors which are to be considered for assessment of damages. Even as per the said rule to assess fir damages, the amendment is necessary.

(v) I do not think any injustice or irreparable loss will be caused to the Opponents as it is admitted fact that Opponents are in occupation of Application premises.

(vi) Opponents will get an opportunity to file Additional Written Statement, if amendment is allowed.

(vii) Any how it is settled law that merits of proposed amendment cannot be decided at this stage. Parties will have to lead evidence to substantiate their respective case.

7. Rejecting amendment will mean that I am shutting out the Applicants from relying on a scientific basis for their claim. The judgments relied on by Shri. Arun Siwach pertain to civil suits which are governed by CPC. As pointed out above, for these cases only principles of natural justice are applicable. This is not a "trial" but an "enquiry" which is of limited scope. I will be affording an opportunity to the Opponents to file an Additional Written Statement in response to fresh show-cause-notice s. Hence there is no prejudice to Opponent."

12.1. Perusal of the reasons given in the aforementioned paragraphs call for no interference whatsoever in the impugned order dated 08.07.2022. I agree with the reasons given by the Estate Officer

in allowing the amendment application and no prejudice whatsoever shall be caused to the Petitioner.

13. It is seen that both parties will be required to lead evidence to substantiate their respective cases. Respondent (original applicant) will also have to lead substantive evidence in respect of its claim for damages. Petitioner, if so desired, can lead evidence in rebuttal thereto. In view thereof, I do not find any error having being committed by the Estate Officer in allowing the application for amendment. The order dated 08.07.2022 clearly records that opponent will get an opportunity to file additional written statement and parties will have to lead evidence to substantiate their respective cases. It further records that opportunity will be given to the Petitioner to file the additional written statement in response to the fresh show-cause-notice and hence, no prejudice whatsoever will be caused to the Petitioner.

14. In view of the observations and findings, the order dated 08.07.2022 is sustained. Consequently, the order dated 22.07.2022 is also sustained.

15. In view of the above, the fresh show-cause-notice dated 29.07.2022 issued by the Estate Officer is therefore upheld. It is however clarified that all contentions and issues of the Petitioner are expressly kept open before the Estate Officer in the proceedings

conducted by the Estate Officer pursuant to the order dated 08.07.2022.

16. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

17. After the present Judgment / Order is pronounced, Mr. Siwach, learned Advocate for Petitioner seeks stay on any action in terms of the fresh show-cause-notice dated 29.07.2022 for a further period of eight weeks to enable the Petitioner to test the present Judgment / Order. Mr. Sanglikar, learned Advocate for Respondent would however oppose the application made by Mr. Siwach.

18. However, in order to enable the Petitioner to approach the Supreme Court, I am inclined to grant the request made by Mr. Siwach. Respondent shall not act on the fresh show-cause-notice dated 29.07.2022 for a period of eight weeks from today.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2023.06.05
19:27:36 +0530