

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7063 OF 2019

Radha Balkrishnalal Pittie & Ors.

...Petitioners

Versus

Niraj Shailesh Gandhi

...Respondent

Mr. Deepak Shukla a/w Mr. Satsang Tailor i/b B. N. Shukla & Co.
for the Petitioners.

Ms. Pooja Thakkar a/w Mr. Ameet Gandhi for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 6, 2023

P. C. :

1. Heard.
2. The challenge in the Petition is to the order dated 9th February, 2018 permitting amendment of the plaint to incorporate the pleadings and consequential prayer for an enquiry into mesne profit
3. The objection of the learned counsel for the Petitioners is that the suit is of the year 1993 and the Application for amendment has been filed in the year 2017. He would further submit that the issues have been framed in the year 2001 and even as of today, the examination-in-chief of the witness of the Plaintiff has not commenced.

4. *Per contra*, learned counsel for the Respondent submits that the determination of the mesne profit is as regards the future mesne profit from the date of passing of the decree of eviction till handing over of the possession and as such there is no issue as regards limitation.

5. The admitted position is that the amendment proposed is a pre trial amendment inasmuch as the parties are yet to lead their evidence. The enquiry into mesne profits is sought from the date of the eviction till the date of handing over the possession and as such, even if the amendment relates back to the institution of the suit, the same does not prejudice the Respondent as the mesne profit is sought from the decree of eviction and not from the date of institution of the suit. No doubt that there has been a considerable delay in filing the Application for amendment. However, as held by the Apex Court in the case of *Life Insurance Corporation Of ... vs Sanjeev Builders Private Limited*, [2022 SCC OnLine SC 1128] delay per se cannot be a ground to reject the amendment particularly when the evidence is yet to be led and as such, it is pre trial amendment. As the suit is of the 1993, the proviso to Order 6 Rule 17 will not apply in the present case. As such, there is no infirmity in the impugned order.

6. This Court is pained to notice that the suit of the year 1993 has not crossed the stage of the framing of the issues. Although issues have been framed in the year 2001, the Plaintiff is yet commence his evidence. No

fault could be found with the Court for the simple reason that the parties to the proceedings have been filing various Interim Applications causing delay in final adjudication. It appears that the Trial Court is therefore helpless and cannot proceed expeditiously even if it desires to do so.

7. In light of the above, the impugned order permitting the amendment cannot be faulted with. Considering that the suit is of the year 1993, I am of the opinion that the time has come to fix a time cap within which the proceedings would be concluded. Learned counsel for the parties submit that the parties would co-operate and would ensure the expeditious disposal of the suit and that no unnecessary adjournments will be sought.

8. The Trial Court is requested to dispose of the suit within a period of one year from today.

9. Writ Petition is disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)