

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 3507 OF 2023

Indubai Rajaram Powar

..Petitioner

Versus

Vishal Prakashrao Savant & Ors.

..Respondents

Mr. Chetan Patil i/b. M. G. Bagkar for Petitioner.

Mr. P. D. Dalvi for Respondents.

CORAM : SARANG V. KOTWAL, J.

DATE : 21 MARCH 2023

PC :

1. This petition is challenging the order dated 05/09/2022 passed by 2nd Jt. C.J.S.D., Kolhapur, in Special Civil Suit No.157 of 2017 below Exhibit 109. By the impugned order, learned Trial Judge has rejected the Petitioner's application for amendment to the written statement. The application was made under O.6, Rule 17 of the C.P.C.

2. The Petitioner is the original Defendant No.3. The Respondent Nos.1 and 2 are the original Plaintiffs. The suit was filed by the Respondent Nos.1 and 2 for possession of the suit property. The Defendants filed written statement on 07/12/2017.

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Thereafter the trial proceeded and three witnesses were examined. After that, this application was preferred for amendment to the written statement. In the proposed amendment, it was pleaded that the Defendant No.3 i.e. the Petitioner was residing in the suit property since 1966 and some details are given about the other tenants. It was also mentioned that the Defendant No.3 was accepting rent from the other tenants. It was also pleaded in the proposed amendment that the predecessor of the Plaintiffs' was aware of these facts.

3. Learned counsel for the Petitioner submitted that the proposed amendment does not change the nature of the written statement. It only elaborates the foundation which is already laid in the written statement and no prejudice would be caused if the amendment is permitted.

4. Learned counsel for the original Plaintiffs i.e. Respondent Nos.1 and 2 opposed these submissions. He submitted that the amendment application is made only to prolong the trial. He supported the reasoned order passed by the trial Court.

5. I have considered these submissions. I have perused the written statement, the proposed amendment, the plaint and the impugned order. Learned Trial Judge has given various dates as follows:

i) Issues were framed on 07/06/2018.

ii) Three witnesses were examined on 29/01/2019, 10/03/2021 and on 15/06/2022.

After all this, the application for amendment to the written statement was made by the Petitioners.

6. Learned Trial Judge in paragraph-6 has given long list of the applications which were made by the Petitioner. It was further observed that, there was no explanation as to why the amendment application was not preferred before the commencement of the trial. It was not done diligently and was not made at the earlier point in time. Ultimately, it was observed that the substantial evidence of the Plaintiff was over after commencement of the Trial. The defendant was not diligent. On this basis the application was rejected.

7. As mentioned by the Trial Court, it does appear that the Petitioner has made all the efforts to prolong the trial. The long list of the various applications supports this finding of the learned Trial Judge. The other issue that the Petitioner could have made these pleadings in the written statement itself is also important. There is nothing to show that the Petitioner had shown due diligence while seeking the amendment. Considering all these aspects, no ground is made out for interfering with the impugned order.

8. Consequently, the Writ Petition is rejected.

(SARANG V. KOTWAL, J.)