

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 14795 OF 2022**

1. Prince Aly Khan Hospital
Aga Hall Nesbit Road, Mazgaon,
Mumbai – 400 010
2. Mr. Amin Manekia
3. Mr. Amir Ali Kotadia
Trustees of Prince Aly Khan Hospital
All Adults, Office At : Prince Aly Khan
Hospital, Aga Hall Nesbit Road,
Mazgaon, Mumbai – 400 010.

...Petitioners**Versus**

1. Mrs. Shirin Munir Merchant
Age : 59 years, Occu.: Housewife
2. Mr. Anwar Shamuddin Mithani,
Age : Adult, Occu.: Retd. Sr. Citizen
3. Mr. Ismail Hasanali Mithani,
Age : Adult, Occu.: Retd. Sr. Citizen
All R/at : Room No. 1, 2, 3, 14 and 15
Chawl No. 9, Aga Hall Estate
Bldg. No.: 48-A, Nesbit Road,
Mumbai – 400 010.

4. The State of Maharashtra.

...Respondents

Mr. Ashish Kamat a/w Mr. Raj Patel, Ms. Diksha J. Shetty i/by AAK Legal for the Petitioners.

Mr. Rohit V. Pawaskar a/w Ms. Sona Y. Baugwala i/by Mr. Yusuf S. Baugwala for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st MARCH, 2023.

JUDGMENT :

1. Heard learned Counsel for the petitioners and learned Counsel for the Respondent No.1.

2. Rule. Rule made returnable forthwith.

3. By consent heard finally at admission stage.

4. It is contention of learned Counsel for the Petitioners that the amendment sought by the Respondent No.1 is not relevant to the suit filed by Respondent No.1. The subsequent events happened during pendency of the suit, cannot be a ground to add it in the plaint by way of amendment, as these events cannot be germane to the suit. Learned Counsel further submits that the filing of Consent Terms and dispossession from the suit premises, cannot be implead by way of amendment. It is nothing but the tactics to prolong the matter.

5. Learned Counsel for the Petitioners further submits that in the proposed amendment, the Petitioners seek to amend the plaint mentioning the fact that the Application made by Petitioners before the Charity Commissioner in Charity Commissioner Office for obtaining loan, which is not relevant to the pending suit. But these facts are not considered by the the Revisional Court, Small Causes Court, Mumbai and passed the impugned order. He relied on ***Revajeetu Builders And Developers Versus Narayanswamy And Sons And Others, (2009) 10 Supreme Court Cases 84.***

6. Learned Counsel for Respondent No.1 submits that the Interim Application, not to dispossess the Respondent No.1 from suit premises, was pending before the Trial Court, during pendency of that Application, Respondent No.1 has been dispossessed from the suit premises under Section 95-A of the MHADA Act. Thereafter the Consent Terms were filed between the Petitioners and Respondent No.1 and the Petitioners provided temporary alternate accommodation to the Respondent No.1 and he wants to plead these facts, about the dispossession under Section 95-A of the MHADA Act and Consent Terms between them, before the Court by way of amendment. Learned Counsel further submits that the Petitioner-Trust filed an Application for taking loan before the Charity Commissioner.

7. It is the case of Respondent No.1 that Respondent No.6 is supporting to the Petitioners and to bring this fact on record the said amendment is sought.

8. I have heard both learned Counsel. Perused the impugned Order passed by the Revisional Court, Small Causes Court, Mumbai, (for short 'Revisional Court'). Perused the proposed amendment.

9. Perused Paragraph Nos.16-A to 16-I of proposed amendment, by way of these paragraphs, Respondent No.1 is seeking to mention the fact that during pendency of the Suit, Respondent No.1 and Respondent No.5 have been dispossessed from the Suit premises under Section 95-A of the MHADA Act and thereafter Consent Terms for alternate accommodation were filed between Respondent No.1, Respondent No.5 and Petitioners. In my view, the basic principle for the amendment is that, the Court has to see if nature of the Suit is not going to change by way of allowing the proposed amendment.

10. It is the case of Respondent No.1 that he alongwith Respondent No.5 is dispossessed from the Suit premises and thereafter Consent Terms are entered with the Petitioners for temporary alternate accommodation and these facts have relevance with the pending Suit.

11. In respect of proposed Amendment regarding objection taken by Respondents No.1 before the Joint Charity Commissioner about the loan Application made by the Petitioners for getting loan, in my view, these amendments are not relevant with the pending suit, which are mentioned in Paragraph Nos.16-J and 16-K. Hence, I am not considering it.

12. Both learned Counsel submits that Respondent No.1 has carried out proposed amendments in view of the Order passed by the Revisional Court, as I observed that the amendments in respect of Paragraph Nos.16-A and 16-I are relevant, hence, I am considering these amendments only and in respect of proposed amendments in Paragraph Nos.16-J and 16-K are not relevant. In view of above, I pass following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned Order dated 11th November, 2022, passed by the Revisional Court, Small Causes Court, Mumbai, is partly quashed and set aside.

- iii. The amendment in respect of Paragraph Nos.16-A to 16-I be remain as it is and in respect of Paragraph Nos.16-J and 16-K be struck off.
- iv. Petition is disposed of.
- v. The Petitioners shall file their Written Statement to the amended portion of the Plaint within four weeks after striking of Paragraph Nos.16-J and 16-K.

(SHIVKUMAR DIGE, J.)