

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO.15135 OF 2023**

Hafriz Pharoah (Percy) Basta & Anr.

...Petitioners.

V/s.

Dolly Jindal and Ors.

...Respondents.

Mr. Siddharth Rajamohan for the Petitioners.

Mr. C. D. Mali, AGP for the Respondent-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11th DECEMBER, 2023.

P.C.:-

1. Heard Mr. Siddharth Rajamohan for the Petitioners and Mr. C. D. Mali, AGP for the Respondent-State.

2. The challenge in the petition is to the order dated 7/10/2023 allowing the amendment of the plaint. RAE & R Suit No.902/1591/1999 was instituted by the plaintiff seeking decree of eviction. During the pendency of the Suit by reason of the written statement filed by the defendant (since deceased) claiming that she is not the sole tenant of the suit premises and present petitioner No.1 is also a joint tenant along with defendant No.1 in the suit premises, the first amendment was carried out and paragraph No.1A was incorporated in the plaint. Paragraph No.1A of

the plaint states that defendant No.1A is residing in her own tenanted premises at B-1, 1st floor, Cusrow Baug, Shahid Bhagatsingh Road, Colaba Mumbai 400 005 standing in the name of husband of defendant No.1. However to obviate any technical or legal difficulties by order of the trial Court, petitioner has been impleaded as additional defendant No.1A. Subsequently, there was another application for amendment filed by the original plaintiff. The schedule for amendment annexed at page 131 of the petition seeks to incorporate a pleading that defendant No.1A i.e. the Petitioner No.1 herein and 1B have after coming into operation of the Bombay Rent Control Act, 1947 acquired vacant possession of B-1, 1st floor, Cusrow Baug, Shahid Bhagatsingh Road, Colaba Mumbai 400 005 where they are presently residing and consequently the plaintiff is entitled to recover possession of the suit premises under the provisions of Section 13 (1) (1) of the Bombay Rent Control Act 1947.

3. The contention of learned counsel appearing for the petitioner is that by amendment of 2008, the petitioner No.1 was impleaded as defendant No.1A and at that time the Maharashtra Rent Control Act, 1999 was in force and as such by the proposed amendment defendant Nos.1A and 1B are sought to be brought within the ambit of Bombay Rent Control Act

1947. The next submission is that although the defendant No.1A has been impleaded in individual capacity as joint tenant by virtue of the first amendment, the impugned order records that defendant No.1A and B are added as legal heirs of defendant No.1.

4. By the first amendment carried out, the specific case of the plaintiff was that defendant No.1A was residing in her own tenanted premises and only to obviate technical difficulties she was impleaded as Defendant No.1A. It appears that subsequently defendant No.1 expired and defendant No.1B came to be impleaded as heir of original deceased-defendant No.1. It is not disputed that the petitioner No.1 i.e. defendant No.1A is the daughter-in-law of deceased defendant No.1. The objection appears to be that defendant 1A and 1B are added as legal heirs of defendant No.1. However perusal of the amendment i.e. paragraph No.1B would indicate that only defendant No.1B was impleaded as heir of original deceased defendant No.1. As such it appears that in the impugned order there is a factual error inasmuch as defendant No.1A has been impleaded by virtue of the claim in the written statement of defendant No.1 of her being a joint tenant whereas the defendant No.1B has been impleaded as legal heir of the deceased defendant No.1. Be that as it may. The amendment which

is sought is a pre-trial amendment and this Court is informed that plaint has already been amended. By virtue of the amendment, whether the defendant have sought to be brought within the ambit of the Bombay Rent Act is a question which can be framed as an issue in the proceedings. It is trite that while considering Application for amendment merits of the amendment are not required to be gone into. The petitioners will be at liberty to file additional written statement and all such issues as are necessary and in accordance with the law will be framed. The objection raised to the Application for amendment can form part of the written statement which will be considered during trial. The amendment does not change the nature of the suit or introduce any fresh cause of action. As such I am not inclined to interfere with the order of the amendment.

5. In light of above, writ petition is dismissed only with the clarification that observations made in paragraph No.11 that defendant No.1A has been added as legal heir of deceased defendant No.1 is incorrect inasmuch as the proposed amendment indicates that she was added in her own capacity as a joint tenant in the year 2008 as defendant No.1A. At this stage, learned counsel appearing for the petitioner submits that the matter is listed before trial Court on 13/12/2023 and his written statement to the

amended plaint is not yet filed. Time of two weeks is granted to the petitioner to file additional written statement to the amended plaint. Trial Court is requested to defer the proceedings beyond a period of two weeks to enable the petitioners to file their written statement to the amended plaint.

(SHARMILA U. DESHMUKH, J.)