

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

WRIT PETITION NO. 1461 OF 2023

Savitridevi Surendra Singh

....Petitioner

V/S

BMC & Anr.

....Respondents

...

Mr. Alankar Kirpekar a/w. Mr. Atul S. Singh, for the Petitioner.

Mr. Santosh Parad, for the Respondent-M.C.G.M.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 16 JUNE 2023.

P.C.:

1. **Rule.** Rule, made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.
2. By this petition, Petitioner challenges order dated 10 December 2022 passed by the City Civil Court, Mumbai dismissing Chamber Summons No. 1404/2022 filed by the Petitioner-plaintiff for amendment of the plaint.
3. Petitioner-plaintiff has instituted the suit against the

Respondent-Municipal Corporation challenging notices issued under Sections 89 and 90 of the Maharashtra Regional and Town Planning Act, 1966. Petitioner was protected by an order of ad-interim injunction which continued to operate till the year 2013. It appears that after the year 2013 the ad-interim injunction was not continued by the City Civil Court. The Respondent-Municipal Corporation proceeded to carry out demolition and dispossession of the Plaintiff from the suit property on 3 August 2021 on the ground of non-continuation of ad-interim injunction.

4. After the demolition and dispossession action of 3 August 2021, Petitioner filed Writ Petition (Lodg.) No.24627/2021 seeking compensation from Respondent-Municipal Corporation for forcible dispossession. The Writ Petition was disposed off on 9 December 2021 granting liberty to the Petitioner-plaintiff to apply to the City Civil Court for relief of compensation. Petitioner-plaintiff thereafter filed Chamber Summons No. 51 of 2022 seeking amendment of plaint. However, instead of seeking to add any substantive prayer for restoration of possession/position of suit property, Petitioner-plaintiff sought to add pleadings and prayers in respect of demand of compensation. Chamber Summons No. 51 of 2022 came to be allowed by the City Civil Court by order dated 12 July 2022.

5. Petitioner-plaintiff thereafter filed Notice of Motion No. 3013/2021 before the City Civil Court for restoration of status-quo *ante*

with regard to occupation and possession of suit property. Since there was no substantive prayer in the suit for restoration of possession and occupation of the suit property, the City Civil Court proceeded to dismiss Notice of Motion No. 3013/2021 holding that the Petitioner-plaintiff was not entitled to any interim protection.

6. It is only after Notice of Motion No. 3013/2021 was dismissed by the City Civil Court that the Petitioner-plaintiff realised absence of specific pleadings and prayer with regard to restoration of status-quo *ante* possession of the suit property. Petitioner-plaintiff accordingly filed Chamber Summons No. 1404/2022 before the City Civil Court seeking to add events relating to dispossession and demolition which took place on 3 August 2021. She also sought to add relief for restoration of status-quo *ante* in the suit. The City Civil Court proceeded to dismiss Chamber Summons No. 1404/2022 by order dated 10 December 2022 which is impugned in the present petition.

7. Mr. Kirpekar learned Counsel appearing for the Petitioner-plaintiff would submit that the events relating to dispossession and demotion occurred on 3 August 2021 and that the Petitioner-plaintiff moved application for amendment diligently in December, 2022. He would further submit that commencement of trial in the suit in the year 2013 is inconsequential for the purpose of deciding application for amendment as the same is in respect of a subsequent event which occurred on 3 August 2021. Mr. Kirepekar would further submit that

while rejecting Notice of Motion No. 3013/2021, the City Civil Court itself made an observation that restoration of possession can be looked into at the time of trial of the suit. He would therefore submit that having regard to certain observations while dismissing Notice of Motion No. 3013/2021, the City Civil Court ought to have permitted Petitioner/plaintiff to incorporate pleadings and reliefs in respect of his prayer for restoration of status-quo *ante*.

8. Mr. Parad, learned Counsel appearing for Respondent-Municipal Corporation would oppose the petition. He would submit that Petitioner-plaintiff earlier filed Chamber Summons No.51/2022 but failed to incorporate relief for restoration of possession. He would submit that the trial in the suit has already commenced and the amendment would amount to washing out of the cross-examination in earlier point of time. He submits that Petitioner-plaintiff has been extremely casual in her approach while prosecuting the suit despite availability of two opportunities viz. (i)at the time of filing Chamber Summons No.51/2022 and (ii)at the time of filing of Notice of Motion No. 3013/2021. She failed to incorporate pleadings and reliefs relating to restoration of possession. She is delaying progress in the suit by moving successive applications for amendment, interim relief etc. He would pray for dismissal of the petition.

9. I have heard learned Counsel for the parties and perused the records of the case. True it is that Petitioner-plaintiff has not been

diligent in moving an application for amendment. The event of dispossession occurred on 3 August 2021. Instead of moving an application for amendment immediately thereafter, Petitioner-plaintiff chose to seek relief in respect of compensation for illegal dispossession and was advised to file Writ Petition (Lodg.) No. 24627/2021. The Writ Petition was disposed off granting liberty to the Petitioner/Plaintiff to apply before the City Civil Court for appropriate reliefs. Accordingly, Petitioner-plaintiff filed Chamber Summons No.51/2022 for amendment of the plaint. However, for incomprehensible reasons, she restricted the amendment only to the relief of compensation and failed to add relief of restoration of possession in the Chamber Summons. Thus, despite availability of opportunity, Petitioner-plaintiff knowingly did not incorporate the relief for restoration of the possession in Chamber Summons No.51/2022. The trial Court proceeded to allow Chamber Summons No.51/2022 by its order dated 12 July 2022.

10. When there was no substantive relief in the plaint for restoration of possession, Petitioner-plaintiff was advised to file Notice of Motion No. 3013/2021 seeking interim relief for restoration of possession. The same came to be rightly rejected by the City Civil Court by its order dated 26 September 2022. It is at this stage that the Petitioner-plaintiff finally realised the mistake and filed Chamber Summons No. 1404/2022 for amendment of the plaint for incorporating the relief relating to restoration of possession.

11. The above chronology of events would no doubt indicate lack of diligence on the part of the Petitioner-plaintiff in filing application for amendment. Considering the Proviso to Order 6 Rule 17 of the Civil Procedure Code, ideally the conduct of the Petitioner-plaintiff could have been a fit reason for rejecting the application for amendment. However, the only factor that weighs in favour of the Petitioner-plaintiff is that though the trial in the suit commenced in the year 2013, the event in respect of which amendment is sought, occurred on 3 August 2021. Though Petitioner had couple of opportunities to incorporate the relief relating to dispossession by amending the plaint, the time gap between the date of occurrence of the event (3 August 2021) and date of filing of Chamber Summons No. 1404/2022 (December 2022), is not too wide. Furthermore, the observations made by the City Civil Court while rejecting Notice of Motion No. 3013/2021 in para-5 of the order dated 26 September 2022 assume importance. The City Civil Court held as under :

“5. Due to change in the nature of suit property, the plaintiff by way of amendment incorporated the relief of compensation in lieu of said plot. Thus, there is change in the nature of suit property. At the time of passing ad-interim protection the plaintiff was in possession but thereafter due to discontinuation of said order and also rejection of notice of motion on merit, the impugned notice is implemented by the

defendant. That is why, the plaintiff is not entitled for revival of said order as prayer for as stated above. The restoration of possession can be looked into after trial otherwise it will have effect or decision of suit without trial. The plaintiff failed to show the prima-facie case. Balance of convenience does not lies in his favour. Hence, no irreparable loss will be caused to the plaintiff.”

12. Thus, the City Civil Court observed that the relief of restoration of possession can be considered at the time of final hearing of the suit. All that the Petitioner-plaintiff now seeks to do is to add the prayer for restoration of possession. In my view, therefore the City Civil Court ought to have allowed Chamber Summons No.1404/2022. At the same time, Petitioner-plaintiff is required to be saddled with exemplary costs on account of her conduct as indicated above.

13. Resultantly, the Writ Petition succeeds. Order dated 10 December 2022 passed by the City Civil Court in Chamber Summons No. 1404/2022 is set aside and Chamber Summons No. 1404/2022 stands allowed in terms of prayers made therein. Amendment to be carried out in the plaint within three weeks from today.

14. Petitioner-plaintiff shall pay costs of Rs.50,000/- to the Respondent-Municipal Corporation within a period of three weeks from today.

15. Needless to say that the Respondent-Municipal Corporation

shall have an opportunity to file additional Written Statement upon amendment of the plaint.

16. Rule is accordingly made absolute.

(SANDEEP V. MARNE, J.)