

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1237 OF 2022

[Bharat s/o Inderchand Kejadiwal .vs. Sharad s/o Mahadeo Mahajan]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Sanket S. Bhalerao, Advocate for the petitioner/original defendant,
Shri S.V. Purohit, Advocate for the respondent/original plaintiff.

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CORAM : ANIL S. KILOR, J.
DATE : 12th JULY, 2023.

1. The order below Exh.24 dated 12.11.2021 rejecting the application for amendment by the Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur is under challenge in the present petition.
2. The amendment application filed by the petitioner, who is a tenant, indicates that it was filed to bring on record the subsequent events. The events which the petitioner wants to bring on record are of the year 2018, 2019 and admittedly the application came to be filed on 25.03.2021.
3. This matter has a checkered history and, therefore, it is necessary to consider the history of this case before taking into consideration the grounds mentioned in the application for amendment or the reasons recorded by the lower appellate court while rejecting the said application.

4. The suit for ejectment and possession was filed by the landlord in the year 2010, which was decreed in the year 2014. Thereafter, an appeal was filed which came to be allowed and the matter remanded back vide judgment and decree dated 23.08.2017.

5. After the remand, the petitioner again filed an application under Order VI Rule 17 of the Code of Civil Procedure for amendment in the written statement with regard to the ownership of the plaintiff over the suit premises. On the same day i.e. on 27.11.2017, the petitioner again filed an application for directing the respondent to produce certificate of passing CA examination of his son Ketan Mahajan.

6. The learned Small Causes Court, vide order dated 29.01.2018 rejected the application under Order VI Rule 17 of the Code of Civil Procedure.

7. Thereafter, the application for direction to the respondent to produce certificate of passing CA examination of his son was rejected, vide order dated 05.03.2018.

8. Thereupon, on 09.03.2018, the petitioner filed an application Exh.125 for grant of permission to lead evidence in respect of subsequent events.

9. On 06.04.2018, the petitioner filed application Exh.129 for bringing the subsequent events on record by way of amendment in the written statement.

10. On 06.06.2018 the application for permission to lead evidence in respect of subsequent events came to be rejected and on the same day i.e. on 06.06.2018 the application for amendment filed on 06.04.2018 came to be rejected.

11. Thereafter, the petitioner filed Writ Petition No.4186/2018 for setting aside the above referred two orders dated 06.06.2018. This court allowed the said writ petition and remanded the matter back to the trial court for fresh consideration of both the applications.

12. On 26.07.2018 the learned trial court rejected both the applications again. Against which writ petition was filed namely Writ Petition No.6708/2018 which came to be allowed, vide order dated 29.01.2020 to the extent of permitting the petitioner to carry out the amendment as per the proposed paragraphs. The High Court further directed that the parties to appear before the trial Court on 10.02.2020 and place on record the amended copy. It was further directed that the petitioner shall conclude the recording of oral evidence of himself and the photographer to the extent of the amended portion, on or before 11.03.2020 and if the respondent desires to tender an affidavit to counter the amendment, shall file an additional affidavit and would also lead evidence, if desired, on or before 31.03.2020. It was further directed that the parties shall advance their submissions orally or even through written notes, on or before 15.04.2020. Thereafter, the trial Court would deliver its judgment, on or before 15.06.2020. It was also observed that it is expected that the petitioner shall not make any further application and strictly adhere to the time frame, failing which, his adjournment

applications would be rejected by imposing costs.

13. Thereafter, on 17.02.2020 the petitioner filed additional evidence on oath at Exh.137 and evidence of Anand Betgiri, the Photographer, at Exh.138.

14. On 02.03.2020, the petitioner was cross-examined by the counsel for the respondent and the photographer was cross-examined on 04.03.2020.

15. The learned Additional Judge Small Causes Court partly decreed the suit on 07.11.2020 and directed the petitioner to evict the suit premises within 30 days of the passing of the decree. It was also directed to pay an amount of Rs.11,494/- along with interest @ 15% per annum from the date of the suit till the realization of the decretal amount.

16. Then the petitioner filed an Appeal under Section 34 of the Maharashtra Rent Control Act before the learned District and Sessions Judge, Nagpur bearing Regular Civil Appeal No.3/2021.

17. The respondent filed cross-objection to the appeal. Thereafter, the learned appellate court granted stay to the execution of judgment and decree passed by the trial Court vide order dated 10.02.2021 passed below Exh.5 and further directed the petitioner to pay Rs.12,000/- per month to the respondent towards occupational charges.

18. Thereafter, the petitioner filed an application Exh.24

for bringing the subsequent events on record by way of amendment in the written statement, the same was rejected. Hence, this petition.

19. Thus, it is apparent on the face of the record that on five occasions till date, the petitioner filed applications for amendment and two applications to adduce additional evidence.

20. In the present application for amendment, there is no dispute that the proposed amendment relates to subsequent events which took place in the year 2018-2019. However, at the first opportunity available to the petitioner, no such application was filed. The petitioner cannot take excuse that he had no knowledge, as the proposed amendment is in respect of adjoining shop, which according to the petitioner, was got vacated by the landlord and let out for the business 'Goli Vadapav'. There a huge delay in filing the application for amendment for bringing the said facts on record. Moreover, after going through the proposed amendment, it can be seen that sufficient material particulars are not given about the subsequent events. Thus, it shows that the intention of the petitioner is not bonafide, but to delay the proceeding on one or another ground.

21. It has come in the order of the lower appellate court that the total area required for the son of the landlord is 600 sq.ft, whereas the adjoining shop admittedly is on 286 sq.ft. not fulfilling the need of the son of the tenant. The purpose would be fulfilled if the premises suit shop which is in possession of the petitioner of the adjoining shop, both are used for the purpose for which the eviction was sought.

22. In the circumstances, I do not find any merit in the present writ petition. As far as the judgment of the coordinate bench of this Court cited by the learned counsel for the petitioner in the case of **Narendra s/o Nirmalkumar Jain and one .vs. Shrikrishna s/o Prafulla Buty in Writ Petition No.2529/2021**, the same is distinguishable on facts. The court has considered and went into examining the efficacy of the documents sought to be produced and the pleadings sought to be brought on record, which has held by this court, are improper in the given facts and circumstances of the said case.

23. Thus, considering the conduct of the petitioner, I am not inclined to exercise the discretion in this matter under Articles 226 and 227 of the Constitution of India. Accordingly, the writ petition is **dismissed**.

24. The learned counsel for the petitioner prays for direction to the appellate court to expedite the appeal. The request is accepted.

25. The appellate court is directed to expedite the appeal and decide the same, in any case, within a period of four months from today.

(ANIL S. KILOR, J.)