

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1372 OF 2024**

Siddhu Appa Patil

... Petitioner

versus

Laxmi Vasant Patil and ors.

.... Respondents

Mr. Sumedh S. Modak i/b. Mr. Vijay Killedar, Advocate for the Petitioner.
Mr. Prajakt Arjunwadkar, Advocate for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd NOVEMBER, 2024.

P.C. :

1. By this writ petition, the petitioner is challenging the impugned order passed below Exhibit-61 in RCS No.74 of 2012, whereby the amendment application filed by the petitioner is partly allowed. It is contention of learned counsel for the petitioner that the petitioner had filed an application below Exhibit-61 for carrying out proposed amendment but the said application is partly allowed. Learned counsel further submitted that section 43 of the Bombay Tenancy and Agricultural Lands Act 1948 (for short "Bombay Tenancy Act") is deleted and amendment in that respect needs to be carried out in the plaint but the said fact is not considered by the learned Trial court. Hence, requested to allow the petition.

2. Learned counsel for respondents submitted that the proposed amendments are already mentioned in the plaint. The petitioner has filed an affidavit of examination-in-chief. The Trial Court has passed a well reasoned order stating that the proposed amendment is already pleaded in the plaint and regarding amendment of Section 43 of the Bombay Tenancy Act, it need not be amended as it is a question of law. Hence, requested to dismiss the writ petition.

3. I have heard both learned counsel, perused the the impugned order.

4. It appears from the record that the petitioner has filed his affidavit of examination-in-chief. Thereafter respondent No.1 filed application for seeking amendment in written statement and it is allowed. Thereafter, the petitioner filed application for proposed amendment. While passing the order on the said application, the learned Trial Court has observed as under :

“I find that all the facts which are proposed to be incorporated in the plaint, which are mentioned in paragraph 2 of the application (Exhibit-61) are already set out in the plaint. So, amendment in that regard cannot be allowed. Secondly, amendment with regard to Section 43 of the Bombay Tenancy Act is pertaining to law and its reference is already mentioned in

the plaint. Even if section 43 is taken as deleted from that Act, it may be taken into account at final hearing as law need not be pleaded. I do not find any of the event in the proposed amendment is occurred subsequently”.

Accordingly, the learned Trial Judge has passed the order.

5. In my view, the petitioner can be permitted to carry amendment in respect of Section 43 of the Bombay Tenancy Act. Accordingly, I pass following order :

O R D E R

1. The petition is partly allowed.
2. The petitioner is permitted to carry out amendment in respect of Section 43 of the Bombay Tenancy Act.
3. The respondents can file written statement to the amended plaint within specified period, if they intend.

The writ petition stands disposed of.

(SHIVKUMAR DIGE, J.)