

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

WRIT PETITION NO.351 OF 2024

Digamber Andappa Lohar

....Petitioner

V/S

Kallu Andappa Lohar

....Respondent

Mr. Rajesh N. Kachare *for the Petitioner.*

Mr. Rajendra D.S. Bhandari *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 18 JUNE 2024.

P.C.:

1 By the present Petition, Petitioner challenges order dated 13 December 2023 passed by Appellate Bench of Small Causes Court, Mumbai, rejecting Application at Exhibit-20 filed by the Petitioner for amendment of the Written Statement. By that Application, Petitioner sought to incorporate pleadings in the Written Statement to the effect that the land on which suit premises are situated is declared as slum by the Gazette Notification dated 2 September 1976. By pleading so, the Petitioner desires to demonstrate that the suit is not maintainable in view of failure to obtain prior permission of the Competent Authority under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**Slum Act**).

2 I have heard Mr. Kachare, the learned counsel appearing for the Petitioner and Mr. Bhandari, the learned counsel appearing for Respondent.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the suit has been instituted by the Plaintiff against the Petitioner/Defendant for recovery of possession by branding the Defendant as gratuitous licensee in respect of the suit premises. In paragraph 5 of the Plaint, Plaintiff has averred as follows:

“5. The plaintiff states that he has been occupying the upper portion having independent access, after allowing defendant and his wife to use and occupy the said room of lower portion from March 1997. The plaintiff states that defendant has been occupying said room gratuitously right from the beginning. The plaintiff states that the occupants of said area had formed Navdurga Co-operative Housing Society (proposed) for developing said plot under S.R.A. Scheme. **The plaintiff states that occupants of the area had approached to Sonu Realtors Pvt. Ltd. For developing said plot under Slum Rehabilitation Scheme.** The plaintiff states that while preparing the list of occupants the defendants had claimed the ownership of suit premises on the basis of occupying ground floor portion in of the suit premises. The plaintiff states that defendant had declined to admit the title and right of plaintiff in respect of suit premises. **The plaintiff states that said area, where suit premises is situated is not declared slum. The permission of Competent Authority is not required.**”

(emphasis supplied)

4 Thus the suit is premised on specific assertion that the land on which suit premises are situated is not declared as slum and that therefore permission of the Competent Authority is not necessary. The Plaintiff has however admitted in the Plaint that the occupants of structures have formed a Co-operative Society and had approached a Developer for redevelopment of

the plot under “Slum Rehabilitation Scheme”. There is thus tacit admission in paragraph 5 of the Plaint that “Slum Rehabilitation Scheme” is capable of implemented in respect of the suit structures.

5 The Defendant appeared in the suit and filed Written Statement. In his Written Statement the Defendant averred that the suit premises bear “Hutment No.248” and has relied upon “census receipt” issued in the name of his wife. The Defendant further contended in the Written Statement that the occupants of the structures on the plot have formed the Co-operative Society for the purpose of developing the plot under Slum Rehabilitation Scheme.

6 Thus there are already specific pleadings both by the Plaintiff and the Defendant about implementation of Slum Rehabilitation Scheme on the land on which the suit structure is located. The Suit of the Plaintiff came to be decreed and now the Defendant has filed Appeal which is pending for consideration before the Appellate Bench. In the pending Appeal, Petitioner filed two Applications. The first Application is filed under provisions of Order 41, Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence. Alongwith application for additional evidence, Petitioner has relied upon Annexure-II issued in respect of the various structures in the year 2007 which apparently includes names of both Plaintiff as well as Defendant. A separate Application was filed for amendment of the Written Statement to incorporate pleadings about the concerned plot being declared as slum.

7 In my view, one of the issues that needs to be determined by the Appellate Bench in the light of the pleadings that already exist in the Plaint and the Written Statement is about necessity to obtain prior permission of the Competent Authority under Section 22 of the Slum Act for which purpose a finding may also have to be recorded as to whether the suit premises form part of slum structure or not? In my view therefore the amendment sought to be introduced by the Petitioner is necessary for the purpose of determining the real question of controversy between the parties.

8 No doubt the Petitioner/Defendant is late in applying for amendment. However if the existing pleadings in the Plaint and the Written Statement are taken into consideration, there appears to be some consensus between the parties that “Slum Rehabilitation Scheme” is capable of being implemented in respect of the suit structure. Additionally there is a specific assertion by the Plaintiff that the concerned plot is not declared as slum and that therefore permission of the Competent Authority is not necessary. In the light of these pleadings, the issue of maintainability of the suit due to requirement of permission under Section 22 of the Slum Act also needs to be determined. What is sought to be done by way of amendment is mere elaboration of pleadings with regard to declaration of the plot being slum area. In my view, therefore, the amendment sought to be introduced by the Defendant seeks to strike at the very root of the suit, foundation of which is already found in the existing pleadings in the form of Plaint as well as Written Statement. Thus no new case is sought to be introduced by the Defendant by amending the

Written Statement. The amendment being necessary to determine the real question of controversy in the pending Appeal, the same ought to have been allowed in my considered view.

9 Mr. Bhandari has relied upon various judgments in support of his contentions. In *S. Malla Reddy vs. M/s. Future Builders Co-operative Housing Society & Ors.*, AIR 2013 SC 3693, the issue was with regard to amendment of Written Statement to resile from admission made therein. This is not the case in the present case as the Defendant is not attempting to resile from any admission made in the Written Statement. *Shivshankara and another vs. H.P. Vedavyasa Char*, AIR 2023 SC 1780 involved the issue of rejection of amendment of Written Statement which requires framing of additional issues and leading of evidence. In that case the Defendant therein had filed Additional Written Statement for as many as eight times and sought to introduce an altogether new case of purchase of property for the first time at the Appellate stage. In the facts of those case, the Apex Court held that the amendment of Written Statement at Appellate stage was impermissible. The judgment is thus clearly distinguishable on facts. In *M/s. Modi Spinning & Weaving Mills Company Ltd. And another vs. M/s. Ladha Ram & Co.*, AIR 1977 SC 680, the issue was about introduction of new case and seeking to displace the Plaintiff completely from admissions made by the Defendant in the Written Statement. This is not the case in the present Petition where no new case is sought to be introduced nor any admission is sought to be resiled from. In *Sumesh Singh vs. Phoolan Devi and others*, (2009) 12 SCC 689, the

issue again related resiling from the earlier statement made and therefore the amendment was held to be not permissible. In **Prabhakar Sadashiv Gokhale and Anr. vs. Ramesh Shankar Ladkat & ors., 2017 (5) ALL MR 481**, Single Judge of this Court has dealt with the issue of stage at which amendment can be allowed before the Trial Court and therefore the judgment would have no application to the facts of the present case. In **Rajkumar Gurawara (Dead) through L.Rs. vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd. & Anr., AIR 2008 SC 2303**, the Apex Court has dealt with the issue of introduction of amendment at argument stage claiming the relief of recovery of possession of suit land and damages from Company, who was never impleaded to the suit originally filed. The judgment in my view therefore would have no application to the facts of the present case.

10 Considering over all conspectus of the case, in my view, the issue of requirement of permission under section 22 of the Slum Act otherwise needs to be determined by the Appellate Court in the pending Appeal in the light of specific assertion made by the Plaintiff in para 5 of the Plaint. The amendment of the Written Statement only elaborates the pleadings which are already on record. The amendment therefore ought to have been allowed by the Appellate Bench. For delay caused in moving the amendment, costs need to be imposed on Petitioner. Mr. Kachare would submit that Petitioner is doing odd jobs as gardener and will not be able to bear the burden of exemplary costs.

11 The Petition accordingly succeeds. The order dated 13 December 2023 passed by the Appellate Bench of the Small Causes Court is set aside.

Application filed by the Defendant/Petitioner at Exhibit-20 for amendment of the Written Statement is allowed. Amendment be carried out within a period of three weeks from today. The Petitioner to pay to Respondent costs of Rs.5,000/- within three weeks from today.

12 With the above directions, the Writ Petition is disposed of.

13 After the order is pronounced, the learned counsel appearing for the Respondent prays for stay of the operation of the order for a period of four weeks. Considering the reasons recorded for passing the order, I am not inclined to stay the order. The request for stay is accordingly rejected.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
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KATKAM
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