

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

WRIT PETITION NO. 1228 OF 2024

Gopal Ramchandra Topale and Ors.

....Petitioners

V/s.

Sachin Trimbak Kulkarni and Ors.

....Respondents

Mr. Vaibhav R. Gaikwad, *for the Petitioners.*

Mr. Anshuman Deshmukh, *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Date : 25 September 2024.

P.C. :

1) The Petitioner has filed this petition challenging three orders dated 30 November 2023 passed on applications at Exhibit-89 (*for amendment of Appeal Memo*), Exhibit-93 (*for amendment of Written Statement*) and Exhibit-91 (*for leading additional evidence under Order 41 Rule 27 of the Civil Procedure Code, 1908*).

2) I have heard Mr. Gaikwad, learned counsel appearing for the Petitioner and Mr. Deshmukh, learned counsel for the Respondents.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the purpose of filing all the three applications is basically to raise the objection of *res-judicata* and maintainability of Civil Suit No.452 of 2015 on the ground that Plaintiff's predecessor-in-title had previously instituted Civil Suit No. 323/2006 seeking eviction of the Defendants on the same grounds i.e. default in payment of rent and bonafide requirement.

Perusal of the written arguments filed on behalf of the Petitioners/Defendants before the Trial Court would indicate that they were aware about the factum of filing of Civil Suit No.323/2006. Despite being aware of filing of Civil Suit No. 323/2006, the Petitioners/Defendants did not incorporate the pleading about filing of the said suit in their Written Statement. To make things worse, even in the Appeal Memo, the ground of filing of previous Suit No.323/2006 was not incorporated even though the said ground was specifically argued in the written submissions filed by the Defendants before the Trial Court.

4) So far as the application for amendment of the Written Statement at Exhibit-89 is concerned, the Defendants are clearly negligent in not incorporating the averment of filing of previous Suit No.323/2006 despite being fully aware about the same. The Appellate Court has therefore rightly rejected the application at Exhibit-89 for amendment of Written Statement.

5) So far as the application at Exhibit-93 for amendment of Appeal Memo is concerned, again the Defendants are negligent in not incorporating the ground relating to previous Suit No. 323/2006 though the said ground was raised in the written arguments before the Trial Court. Therefore, no fault can be found in rejecting the application at Exhibit-93.

6) So far as the rejection of application at Exhibit-91 for production of additional evidence under the provisions of Order 41 Rule 27 of the Code is concerned, Mr. Gaikwad would submit that the said application could not have been decided before the Appeal is

taken up for hearing. Though, ordinarily what Mr. Gaikwad submits would have been correct, in the facts and circumstances of the present case, the Appellate Court has not committed any error in rejecting the application at Exhibit-91 at the threshold. Though, it is not required to go into the issue of *res-judicata* in the present petition, it is seen that previous Suit No. 323/2006 was filed by different Plaintiff. Though the grounds of eviction on bonafide requirement and default in payment of rent are common between the two Suits, the bonafide requirement of a different Plaintiff was pleaded in Suit No.323/2006 which was altogether different from bonafide requirement of the current Plaintiff pleaded in Civil Suit No.452/2015. So far as the ground of non-payment of rent is concerned, obviously the period of default in two suits are entirely different. I am therefore convinced that the applications at Exhibits-89, 93 and 91 are filed solely for the purpose of whiling away time and delaying decision of the Appeal.

7) The conduct of the Petitioners in prosecuting the present petition also needs to be taken into consideration. In ground clause-(I), Petitioners have raised the following ground :

(I) The Appellate Court ought to have considered that the decision was not within the knowledge of the Petitioners and even after due diligence the Petitioners could not produce it before the lower Court.

8) Thus, it is sought to be pleaded before this Court that the decision of previous Suit No. 323/2006 was not known to the Petitioners. However, in the written submissions filed before the Trial Court in Suit No. 452/2015, following arguments were made :

श्रीमती शांताबाईने प्रतिवादी चे विरुद्ध पुणे येथील लघुवाद न्यायालयायेथे दि.१२.७.२००६ रोजी अचानक पणे दावा जागेचे ताब्याकरता मुकादमा नं.३२३/२००६ चा दावा लावला होता. त्याप्रकरणी प्रतिवादी यांनी हजर होवून लेखी कैफीयत देखील दाखल केली होती. सदर दाव्याचे कामी वादी हिने प्रतिवादीकडे दावा जागेचे भाडे बाकिची मागणी देखील केली नव्हती. त्या दाव्याचे कामी प्रतिवादीकडून वादींना स्वतःचे राहाण्यासाठी दावा जागा पाहिजे अशी प्रमुख मागणी होती. सदरचा दावा दि.१२.७.२००६ रोजी दाखल केले नंतर वादी गैरहजर राहिलेने व प्रकरणात पुरावा देण्याची पुरतता न केल्यामुळे म. कोर्टाने सदर दावा ता.१७.३.२००६ रोजी निकाली काढला व तसा दाव्याचे नि.१ वर वर हुकूम केला आहे.

9) The Petitioners were thus fully aware of factum of dismissal of the previous Suit No.323/2006 on 17 March 2009 but have made false statement on oath before this Court that they were not aware about the result of the said suit. Petitioners have thus misused the jurisdiction of this Court by making false statements on oath. Therefore, the dismissal of the petition cannot be without imposition of exemplary costs.

10) The Writ Petition is accordingly **dismissed with costs of Rs.25,000/-**. The costs shall be paid to the Plaintiff within a period of four weeks from today.

11) It appears that, by order dated 30 July 2024, this Court has extended time to decide Regular Civil Appeal No.31/2020 upto 21 September 2024. On account of filing of the present petition, it appears that Petitioners have not prosecuted the Appeal before the Appellate Court. In that view of the matter, the time to decide Regular Civil Appeal No.31 of 2020 stands extended upto 15 October 2024. It is made clear that no further extension of time shall be granted.

[SANDEEP V. MARNE, J.]

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