

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

WRIT PETITION NO.8449 OF 2024

Yashwant Shivram Limaye since
deceased through his legal heirs
1A Mr. Milind Yashwant Limaye

...Petitioner

Versus

Shridhar Sakharam Limaye and Ors.

...Respondents

...

Mr. Rohit D. Joshi for the Petitioner.

CORAM : SANDEEP V. MARNE J.

DATED : 18 JUNE 2024.

PC:

1. Challenge in the present petition is to the order dated 11 December 2019 passed by the Trial Court rejecting the application for amendment of written statement as well as the order dated 12 March 2024 passed by the District Judge-3, Raigad-Alibag rejecting the Civil Revision Application and confirming the order of the Trial Court.

2. I have heard Mr. Joshi, the learned counsel appearing for the Petitioner and have gone through the proposed amendments.

3. It appears that the Suit was initially decreed, and Appellate Court has set aside the decree dated 17 June 2014 and has remanded Regular

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Civil Suit No.28 of 2008 to the Trial Court for the limited purpose of framing and deciding the issue of comparative hardship under Section 16(2) of the Maharashtra Rent Control Act, 1999. After the Suit was remanded, Petitioner/Defendant filed application for framing three additional issues about existence of landlord-tenant relationship, jurisdiction and protection of possession under Section 53A of the Transfer of Property Act, 1882. The Trial Court rejected the application. However, the District Court partly allowed the same only to the extent of framing of additional issue relating to protection of possession under Section 53A of the Transfer of Property Act. The said issue is directed to be framed on account of the averments in the written statement that the suit property was agreed to be sold to Defendant on accepting consideration of Rs.12,001/- by the Plaintiff on 9 August 1984.

4. It also appears that the Petitioner also filed a separate application at Exhibit-210 for amendment of the written statement for incorporation of paragraphs 8(a), 8(b) and 8(c). In the proposed amendment in paragraph 8a and 8b, the Petitioner essentially intended to add averments with regard to transaction of alleged sale of suit premises by Plaintiff to the Defendants in support of his contention of protection of possession under Section 53A of the Transfer of Property Act. After going through the averments in paragraphs 8(a) and 8(b) of the proposed amendment, it is seen that the averments with regard to

alleged transaction of sale are already incorporated in paragraph 8 of the written statement. In my view therefore, it is not at all necessary either to elaborate or to repeat averments with regard to the alleged transaction by adding additional pleadings by way of amendment.

5. So far as the proposed averments in paragraph 8(c) are concerned, it is seen that the same are sought to be added for the purpose of buttressing the Defendant's case that Plaintiff has/had alternate premises at Panvel and therefore, the Defendant would suffer hardship in the event the suit being decreed. Again, the averment to this effect is already made in paragraph 7 of the written statement. All that the Defendant is now desires to add by way of paragraph 8(c) is that the Plaintiff had let out one room of the suit premises for the residential purpose while selling the other room for commercial purpose to the Defendant. In my view once the averments of availability of sufficient premises to the Plaintiff is already made in paragraph 7 of the written statement, further case can always be elaborated by leading necessary evidence in that regard. It is not necessary to amend the pleadings, which would delay decision of the appeal.

6. In my view therefore, the Trial Court has rightly rejected the application for amendment of written statement and the District Court has correctly upheld the order of the Trial Court. Leaving open liberty

to the Petitioner/Defendant to lead evidence in support of his contentions of protection of possession under Section 53A of the Transfer of Property Act and availability of alternate premises to Plaintiff-landlord, the Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]