

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9143 OF 2024

Avinash Shivaji Vayal and anr.

....Petitioners

: Versus :

Smt. Smita Gajanan Sawant & Ors.

....Respondents

Mr. Aniruddha Sapre *a/w. Ms. Amrita Singh, for the Petitioners.*

Mr. Sameer S. Kolge, *for Respondent Nos.5 to 7.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 August 2024.

P.C. :

1) This petition raises challenge to the order dated 20 March 2024 passed by the Appellate Bench of the Small Causes Court by which application filed by the Intevenor sisters, who are now impleaded as Appellants at Exhibit-62 is allowed and they are permitted to carry out amendment in the Memo of the Appeal as per the schedule to the amendment application.

2) I have heard Mr. Sapre, the learned counsel appearing for the Petitioners and Mr. Kolge for the contesting Respondents.

3) So far as impleadment of Petitioners as party Respondents to the Appeal is concerned, I do not see any valid ground to interfere in the impugned order passed by the Appellate Bench. Petitioners now claim to be inducted as tenants in respect of the suit premises after surrendering of tenancy by the Original Appellant Nos.1 to 3. By a separate order passed today, this Court has upheld the order dated 16 March 2023 by which the Intervenor has been permitted to be added as Appellants and the Original Appellant Nos.1 to 3 are transposed as Respondent Nos.5 to 7 in the Appeal. In case, the Intervenor who is now the Appellant, succeeds in the Appeal and the decree of eviction is set aside, the same would obviously affect the interest of the Petitioners. In that view of the matter, presence of the Petitioners in the Appeal would be necessary.

4) So far as the grounds that are sought to be incorporated in the Appeal memo by way of amendment is concerned, it is seen that Ground Nos. (oo) and (pp) relate to alleged claim of the current Appellants in respect of their tenancy rights. The said rights are being agitated by them in separate R.A.D. Suit No.990/2022. In that view of the matter, it is questionable as to why the said aspect is sought to be agitated in the Appeal. Infact, perusal of the order passed by the Appellate Bench on 20 March 2024 would indicate, that no consideration is given to the proposed ground clauses to be incorporated in the Appeal Memo. In my view, therefore the Appellants cannot be permitted to incorporate ground clauses

(oo) and (pp) in the Appeal Memo. This is the only modification that would be needed in the order dated 20 March 2024. The Writ Petition is accordingly disposed off by upholding the order dated 20 March 2024 with a caveat that the Appellants shall not incorporate ground Clauses (oo) and (pp) in the Appeal Memo.

5) In case the amendment is already carried out, the ground clauses (oo) and (pp) be deleted from the amended Appeal Memo.

6) At this stage, Mr. Sapre, would submit that the Appellate Bench has passed an order directing that the Appeal would proceed *ex-parte* against the Petitioners. He would submit that Petitioners were prosecuting the present petition challenging their impleadment in the Appeal and in the mean time, the Appellate Bench has proceeded to direct hearing of the Appeal in absence of the Petitioners. Considering the fact that the present petition was pending, in my view, an opportunity needs to be given to the Petitioners to defend the appeal to prevent another round of litigation to set up challenge against the *ex-parte* order. Accordingly, the Appellate Bench shall permit the Petitioners to participate in the hearing of the Appeal. With the above directions, the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]