

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10305 OF 2024

1. Suhas Gangadhar Kannamwar
and anr.

....Petitioners
(Orig.Appellants/Defendants)

: Versus :

Sandeep Dattatray Walavalkar

....Respondent
(Orig.REspondent/Plaintiff)

Mr. Shravan M. Vyas , for the Petitioners.

Mr. Navin Singh i/by. Mr. Kalpesh M. Karkera, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 November 2024.

P.C. :

1) The petition challenges order dated 15 June 2024 passed by the Appellate Bench of the Small Causes Court rejecting Defendants' application for amendment of the Written Statement at Exhibit-15.

2) The suit is instituted by the Plaintiff seeking recovery of possession of the suit premises from the Defendants for the *bonafide* requirement of his own, as well as of his brothers. It appears that after Plaintiff closed his evidence, he recovered possession of Flat No.6 in pursuance of decree passed in R.A.E. Suit 2118/2196 of 2008. Certified copy of the said decree was produced before the Trial Court by the

Defendants. The Trial Court however proceeded to still decree the suit on the ground of *bonafide* requirement of Plaintiff and his brothers holding that even after securing possession of Flat No.6, their requirement continued to survive.

3) Defendants have filed Appeal No.167/2018 challenging the eviction decree dated 22 January 2018. In their Appeal Memo, Defendants have included the ground about Plaintiff securing possession of Flat No.6 with further averment that the same has been kept locked and closed since April 2017. Defendants however, did not file any application for amendment of the Written Statement immediately after filing of the Appeal. Five years after filing of the Appeal, Defendants were advised to file application at Exhibit-15 for amendment of the Written Statement by relying on electricity bills of Flat no.6 for the purpose of incorporating an averment in the Written Statement that the said Flat No.6 is not being used by the Plaintiff or his brothers. The application for amendment of the Written Statement at Exhibit-15 has been rejected by the Appellate Bench by order dated 15 June 2024, which is subject matter of challenge in the present petition.

4) I have heard Mr. Vyas, the learned counsel appearing for the Petitioners and Mr. Singh, the learned counsel appearing for the Respondent.

5) No doubt, Defendants acquired knowledge about Plaintiff securing possession of Flat No.6 during pendency of the suit. This is the reason why they placed on record certified copy of the decree passed in R.A.E. Suit No.2118/2196 of 2008. However, Defendants did

not apply for amendment of the Written Statement contemporaneously. They merely relied upon the decree passed in the said suit and attempted to demolish the case of *bonafide* requirement raised by the Plaintiff. Even after filing of Appeal No.167/2018, though Defendants raised ground of securing possession of Flat No.6, as well as Plaintiff keeping the same locked and unused, they did not feel it necessary to file an application for amendment of the Written Statement. They however monitored Plaintiff's alleged act of non-user Flat No.6 for a substantial period of time and only after securing copies of electricity bills in respect of Flat No.6 showing insignificant consumption of electricity, thought of filing application for amendment of the Written Statement at Exhibit-15 in August 2022.

6) While Mr. Singh is not entirely wrong in trying to blame the Defendants of not showing due diligence by relying on Proviso to Order 6 Rule 17 of the Code, it must be appreciated that what is sought to be incorporated by way of amendment of the Written Statement is not just the factum of securing possession of Flat No.6, but also the fact that the electricity consumption in respect of the said flat is negligible. Defendants are relying on electricity bills dated 20 June 2019, 19 September 2019 and 20 January 2022 for proving insignificant consumption of electricity in support of their case of non-use of Flat No.6. The amendment is thus triggered by occurrence of events during pendency of the Appeal, where Defendants have monitored alleged continuous non-use of Flat No.6 by the Plaintiff. In that view of the matter, though Defendants can be blamed for lack of due diligence in respect of the averment relating to securing possession of Flat No.6, so far their allegation of insignificant

consumption of electricity upto January 2022 is concerned, it cannot be said that there was any delay in filing the application for amendment. The Appellate Bench of the Small Causes Court has erred in not appreciating the above position. In my view, therefore the Appellate Court ought to have allowed the application for amendment of the Written Statement since Plaintiff is required to exhibit existence of *bonafide* need right till termination of proceedings.

7) Mr. Singh would complain about inordinate delay in decision of the Appeal in the event of the application for amendment of the Written Statement being allowed. He would submit that Defendants would then urge before the Appellate Court to remand the proceedings to the Trial Court for recording of additional evidence relating to the amended pleadings. He would submit that the suit was instituted by the Plaintiff on 24 November 2009 and despite passage of about 16 long years, the Plaintiff is still not able to recover possession of the suit premises from the Defendants. With a view to obviate any delay in decision of the Appeal, Mr. Singh, after taking instructions from his client, who is personally present before the Court, fairly makes a statement that the Plaintiff is agreeable to marking of the said three electricity bills dated 20 June 2019, 19 September 2019 and 20 January 2022 as Exhibits for the purpose of being read in evidence. He would therefore submit that the Appellate Court be directed to proceed with the hearing of the Appeal by taking into consideration the amended Written Statement, as well as the three electricity bills. He would submit that the effect of consumption recorded in the electricity meter of Flat No.6 would be argued before the Appellate Bench. this course of action suggested by Mr. Singh appears to be fair and would prevent delay in decision of the appeal. The appellate court

can accordingly consider the effect of securing of possession of Flat No. 6 together with the effect of consumption of electricity units reflected in those three bill on *bonafide* need of Plaintiff, while deciding the Appeal.

8) I accordingly proceed to pass the following order :

- (i) The order dated 15 June 2024 passed by the Appellate Bench of the Small Causes Court is set aside.
- (ii) The application for amendment of the Written Statement at Exhibit-15 is allowed. Defendants to carry out amendment as per the Schedule within a period of 3 weeks.
- (iii) The Trial Court shall proceed to mark the electricity bills dated 20 June 2019, 19 September 2019 and 20 January 2022 as Exhibits, for the purpose of being read in evidence.
- (iv) The Appellate Bench shall accordingly proceed to decide the Appeal on the basis of amended Written Statement, as well as the three electricity bills directed to be marked in evidence, on its own merits, without being influenced, in any manner, by any of the observations made in the present order.

9) With the above directions, the Writ Petition is **allowed and disposed of.**

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[SANDEEP V. MARNE, J.]