

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

WRIT PETITION NO.12024 OF 2024

Sudhir Shashikant Niphadkar

....Petitioner

V/S

Jayesh Kumudchandra Shah & Anr.

....Respondents

Mr. Vivekanand Akshali *for the Petitioner.*

Mr. Bipin Joshi *for Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATE : 26 AUGUST 2024.

P.C.:

1 The Petition is filed to challenge the order dated 1 March 2024 passed by Appellate Bench of Small Causes Court by which the application filed by the Respondents/original Plaintiffs for amendment of plaint at appellate stage has been allowed. The only amendment that the Plaintiffs proposed to carry out in the plaint was to correct the description of the suit premises which were erroneously described as Room No.30(e) when in fact Petitioner/Defendant is the tenant in respect of Room No.30(c). This limited amendment has been allowed by the Appellate Bench by imposing costs on the Plaintiffs.

2 The learned counsel appearing for Petitioner would vehemently submit that the error in the plaint was specifically brought to the notice of Plaintiffs by

raising a contention about erroneous description of the suit property in paragraph 3 of the Written Statement. That the error was once again pointed out during the course of evidence. It thus appears that Plaintiffs were negligent in not correcting the error by describing the suit property correctly during the course of pendency of the suit. Plaintiffs have sought to blame his advocate for not correcting the error in description of the suit property.

3 In my view, correction of description of the suit property from Room No.30(e) to Room No.30(c) would in fact enable the Court to effectively decide the subject matter of controversy between parties. If the error is permitted to be perpetrated, the same would result in passing of an ineffective decree in the event the Plaintiffs succeeds in the Appeal. In that view of the matter, though the conduct of the Plaintiffs appears to be negligent, the same cannot be a reason for reversing the decision of the Appellate Bench in allowing amendment. No palpable error therefore can be traced in the order dated 1 March 2024. Writ Petition is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
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