

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13093 OF 2024
AND
WRIT PETITION NO. 13095 OF 2024

Smita Sakharam Aroskar

... **Petitioner**

Versus

M/S. Ish Home Pvt Ltd

... **Respondent**

Mr. Tanvir Shaikh *for the Petitioner.*

Mr. Vishal Kanade *i/b Mr. Javed A. Khan for Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 13 NOVEMBER 2024.

P.C. :

1) I have heard Mr. Shaikh, the learned counsel appearing for Petitioner in both the Petitions. It appears that, when the Appeal was about to be heard by the Appellate Bench of the Small Causes Court, the Petitioner/Appellant came out with a novel idea of filing following three separate applications :

- i) For amendment of written statement.
- ii) For amendment of Appeal memo by incorporation of additional grounds.
- iii) For production of additional evidence under provisions of Order XLI, Rule 27 of the Code of Civil Procedure.

It appears that all the three applications are for same purpose of bringing on record information and documents relating to issuance of notice by MHADA under provisions of Section 79-A of the Maharashtra Hosing and Area Development Act to the landlord stating that the building is in dilapidated/dangerous condition requiring its immediate redevelopment. It is however seen that the decree has been passed against the Petitioner on the ground of non-user. Therefore, subsequent event of issuance of notice under Section 79-A of MHADA Act on 1 June 2023 is not really relevant for the purpose of decision of the either suit or the Appeal.

2) The Appellate Court is on the verge of finally hearing the Appeal and since the subject matter sought to be brought on record by all the three applications is same, the Appellate Court has thought it prudent to decide all the three applications at the time of hearing of the Appeal. It is a settled position of law that the application for production of additional evidence under Order XLI Rule 27 of the Code is to be heard and decided alongwith hearing of the Appeal. There is no denial to the position that the applications for amendment of written statement and for amendment of Appeal memo also seek to bring on record same information and document relating to issuance of notice dated 1 June 2023. It is in the light of these peculiar circumstances that the Appellate Bench has directed hearing of all the three applications at the time of final hearing of the Appeal. Considering this position, I am not inclined to interfere in the impugned order. Writ Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]