

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.800 OF 2025

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Janardhan Madhav Surve & Ors.

...Petitioners

Versus

Sharad Baban Ganjiwale & Anr.

...Respondents

Mr. S. C. Wakankar i/b Aishwarya Bapat, for the Petitioners.

Mr. Suhas B. Rohile i/b Sharad Chandrachood, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATED: 24 FEBRUARY 2025

P.C.:

1. Heard Mr. Wakankar, learned Counsel for the Petitioners and Mr. Rohile, learned Counsel for the Respondents.

2. By the present Writ Petition the challenge is to the Order dated 7th May 2024 passed by the learned 6th Additional Judge, Small Causes Court & Joint Civil Judge, Senior Division, Pune below Exhibit - 221 in Civil Suit No.149 of 2019 as well as to the Order 6th December 2024 passed by the learned District Judge – 8 and Additional Sessions Judge, Pune in Civil Revision Application No.10 of 2024.

3. By the impugned Order dated 7th May 2024, an Application filed by the Petitioners i.e. Defendant Nos.1 to 3 seeking amendment in their written statement has been rejected. The Revision challenging the same has also been rejected by the impugned Order dated 6th December 2024.

4. It is the submission of Mr. Wakankar, learned Counsel for the Petitioners that by the proposed amendment contentions are sought to be taken in the written statement regarding the documents which have been produced by the Plaintiff during the cross-examination of DW-1. It is his submission that both the Courts have rejected the Application on the ground that the Defendants have not fulfilled proviso to Order VI Rule 17 of the *Code of Civil Procedure, 1908* (“CPC”). He submitted that as the said documents were brought on record during the cross-examination of DW-1, the question of not fulfilling the requirement of proviso to Order VI Rule 17 of CPC does not arise.

5. However, perusal of the impugned Order dated 7th May 2024 shows that in Paragraph Nos.8 and 9 the learned Judge has given elaborate reasons. The said Paragraph Nos.8 and 9 read as under :-

“8] The present suit is under Maharashtra Rent Control Act. It is bounden duty of the parties to state their properties in respect of issue of bonafide requirement and greater hardship. The defendants while filing written statement kept silent about their other properties. The defendants have not disclosed their properties. In this backdrop, when the plaintiff brought on record properties in cross-examination of defendants, present application came to be filed. As discussed earlier, the defendants have not pleaded or even shown any due diligence while filing the present application. I found that, proposed amendment is nothing but to counter said admissions came on record during cross-examination of defendants. Therefore, it is not proper to permit the defendants to amend the pleadings which are taken away admissions in the cross-examination.

9] Thus, even liberal approach taken by the Court, in the absence of due diligence and taken away admissions in cross-

examination, the amendment application could not be allowed.”

(Emphasis added)

6. The said Order has been confirmed by the learned District Judge, by holding that the documents which were referred in cross-examination are admitted by the Defendants and those were exhibited. It is also observed that the learned Trial Court has properly appreciated the facts and properly given the reason while rejecting the Application.

7. The learned Trial Court apart from other aspect has specifically held that the documents which are brought on record during the cross-examination of the Defendant's witness by the Plaintiff is in respect of the issue of bonafide requirement and greater hardship. It is further held that the Defendants while filing written statement have kept silent about their other properties. The Defendants have not disclosed their properties and from that perspective the learned Trial Court has held that the Defendants have not pleaded or even shown any due diligence while filing the Application.

8. Accordingly, no interference in the impugned Order is warranted. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]