

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3794 OF 2025

Shyam Rajkishore Singe	...Petitioner
<i>Versus</i>	
M/s. Ish Homes Private Limited	...Respondent

Mr. Aseem Naphade a/w. Mr. Subhash G. Bane and Ms. Neha Bane,
for the Petitioner.
Mr. Khan Javed Akhtar, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED : 13th MARCH 2025

P. C.:

1. Heard Mr. Naphade, learned Counsel appearing for the
Petitioner and Mr. Khan, learned Counsel appearing for the
Respondent.

2. The challenge in this Writ Petition filed under Article 227 of
the Constitution of India is to the order dated 25th September 2024
passed by a learned Judge, Small Causes Court, Mumbai below
Exhibit-108 in Rent Act Eviction (RAE) Suit No.915 of 2007. By the
impugned order, said Application bearing Exhibit-108 seeking
amendment in the written statement has been rejected. The

Petitioner is the Defendant in the said suit and the Respondent is the Plaintiff.

3. Admittedly, the amendment Application has been moved at the stage when arguments in rejoinder of the Defendant were in progress. As far as the Amendment Application is concerned, admittedly, subsequent events are sought to be brought on record. The subsequent events are relating to the redevelopment proposal submitted by the Respondent/Plaintiff/Landlord to MHADA concerning larger property admeasuring 3194 sq.mtr., which also includes the building in which the suit premises is situated. However, it is required to be noted that the suit has been filed for eviction under Section 16(1) (a) and (b) of the Maharashtra Rent Control Act, 1999 (**“the Rent Act”**) and contention raised is that the Petitioner-Tenant has erected the permanent structure. Thus, it is very clear that the amendment is not at all necessary for deciding the dispute with respect to the suit.

4. Mr. Naphade, learned Counsel is right in contending that the learned Trial Court has incorrectly held that the proposal of the redevelopment submitted by the landlord doesn't include the

structure or property in which the suit premises is situated, as the said proposal is concerning huge property admeasuring 3194 sq.mtrs. and the suit structure is admittedly part of the same.

5. However, the said subsequent event is not relevant for deciding the issues involved in the said suit, which has been filed specifically under Section 16(1) (a) and (b) of the Rent Act, which reads as under:

“16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied—

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;

Explanation.—For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation.—For the purposes of this clause, the expression “permanent structure” does not include the carrying out of any work with the permission,

wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work of opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or”

(Emphasis added)

6. Thus, one of the ground of eviction is that without the landlord's consent in writing, the tenant has erected on the premises permanent structure and the other ground is tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882. Thus, it is very clear that the proposed amendment is not required and not relevant for deciding the issues involved in the said suit.

7. Mr. Naphade, learned Counsel would have been right if, the recovery of possession would have been sought on the ground available under Section 16(1) (g) of the Rent Act namely that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or under Section 16(1)(h) or (i) of the Rent Act i.e. the premises are required either for carrying out repairs or that the premises are reasonably and *bona fide* required by the landlord

for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.

8. Mr. Naphade, learned Counsel, has relied on the decision of the Supreme Court in the case of *Rajesh Kumar Aggarwal & Ors. vs. K. K. Modi & Ors.*¹. However, it is required to be noted that the said case is concerning pre-trial amendment. In any case, as proposed amendment is not concerning issues involved in the suit, the said decision will have no application to the facts of the present case.

9. Mr. Naphade, learned Counsel, has also relied on the decision of a learned Single Judge of this Court in the case of *Rama Shanu Naik Dessai vs. Director, Goa State Urban Development Agency & Ors.*². However, the said judgment is passed on the basis of law laid down by the Supreme Court in the case of *Rajesh Kumar Aggarwal & Ors.* (supra) which is not applicable to the present case. Therefore, the said decision is also not relevant to the present case.

1 (2006) 4 SCC 385

2 (2023) SCC OnLine Bom 900

10. Accordingly, no interference in the impugned order under Article 227 of the Constitution of India is warranted.

11. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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