



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4161/2024

Dr. Sunil Suresh Sakarkar and another

...Versus...

Kirti s/o Natwarlal Metha (since deceased by L.Rs.)

Smt. Smita wd/o Kirtikumar Mehta (Deleted)

Siddhartha s/o Kirtikumar Mehta and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. J.J. Chandurkar, Advocate for petitioners

Mr. Saransh Wasnik Advocate i/b Mr. M.M. Sudame, Sr. Advocate and

Mr. Fidvi, Advocates for respondent

CORAM : SACHIN S. DESHMUKH, J.

DATE : 11/08/2025

1. The present petition raises a question to the impugned order rendered by the Joint Civil Judge Senior Division, Amravati wherein an application under Order VI Rule 17 r/w Section 151 and 153 of the Code of Civil Procedure came to be rejected. The same is challenged herein under Article 227 of the Constitution of India.

2. The present petitioners who are the defendants in the suit were inducted as tenants in the suit premises by the respondents/plaintiffs pursuant to a lease-deed for a period of five years.

3. It is submitted that as per the said lease deed there would be a 5% increase in the monthly rent every year. And pursuant to the contractual obligation it was for the

tenants to pay the increased rent. However, the failure on the part of the petitioners to pay the said rent resulted into issuance of a notice by the plaintiffs/landlords asking to pay the arrears of rent within 90 days. Though, the petitioners responded to the said notice, however, avoided to pay the rent as agreed upon. Therefore, the suit was presented for recovery of money along with interest, decree of ejectment and possession in favour of the plaintiffs under Section 15 of the Maharashtra Rent Control Act, 1999.

4. In response to the suit summons, the petitioners tendered their detailed written statement countering the contentions raised in the plaint. Upon completion of the pleadings, the issues are framed and thereafter the parties to the litigation proceeded to adduce evidence. Resultantly, evidence was adduced by the litigating sides and eventually the matter was posted for final arguments.

5. At that juncture, the Petitioners filed an application under Order VI Rule 17 of the Code of Civil Procedure for amendment in the written statement on the grounds that certain facts proposed to be incorporated by way of amendment were informed to their previous Counsel representing them. However, at relevant point of time, the supporting documents and cheques given by the plaintiffs to the defendants were missing. Moreover, it was informed by the previous Counsel that the said facts could not be pleaded in their written statement as there were no documents to prove the same. Thus, in the absence of relevant documents and on

the instructions of the previous counsel, the same were not pleaded in the written statement.

6. It is further submitted that on 05/11/2023, the defendants shifted their house and started residing in a new house. During the process of shifting the defendants traced the relevant documents and the cheques received by them from the plaintiffs. The defendants wanted to bring these facts on record in the said suit by way of amendment application. It is submitted that the amendment is necessary to decide the real controversy between the parties. Also, the amendment is rather necessary to decide the issue in suit and does not change nature of the suit. That there is no negligence on the part of the defendants and that no prejudice would be caused to the other party if amendment application is allowed.

7. In the aforesaid backdrop, the trial court observed that the amendment so sought in the written statement is at the juncture when the suit was posted for final arguments. Moreover, the facts that were sought to be incorporated by way of amendment were well within the knowledge of the Petitioner. Although, it is asserted by the Petitioners that those could not be pleaded due to reasons stated herein above, it is admitted that the said facts were within their knowledge. As such, it appears that the petitioners were not diligent to seek amendment of the said fact at the relevant point of time and a new theory was being proposed by way of the amendment cannot be permitted. Resultantly, the application, seeking amendment under Order VI Rule 17 of the Code of Civil

Procedure came to be rejected.

8. Mr. Chandurkar, learned Counsel for the Petitioners while challenging the sustainability of the order has submitted that the amendments are necessary for determining the real question in controversy ought to be allowed and that the proposed amendment does not cause any prejudice to the plaintiff. Thus, the amendment has to be allowed as prayed by the petitioners.

9. Per contra, Mr. Saransh Wasnik, learned Counsel for the respondents/defendants has supported the order. It is vehemently submitted that the petitioner being tenant of the premises is attempting to prolong the suit by deploying dilatory tactics. It is further submitted that the Petitioners have shown no due diligence to incorporate the amendment as those facts were within their knowledge which is evident averments in the application, wherein the Petitioners have unequivocally admitted that these facts were not incorporated because of the then Counsel who was representing them before the trial Court. As such, the learned Counsel for the respondents prayed for rejecting the application for amendment, which is manifestly aimed to further delay the suit.

10. Having heard both the learned Counsel for the litigating sides at length, the issue is whether the amendment application, so presented by the petitioners at the juncture when the suit is posted for final argument deserves

consideration in the light of the provisions to that effect. It is admitted by the Petitioners that the facts proposed to be amended were well within the knowledge of the petitioners. The learned Counsel for the respondents is justified in inviting attention of this Court to para 3 of the application for amendment wherein the petitioners have stated that these contentions could not be incorporated owing to advice to that effect.

11. Nevertheless, in absence of due diligence the petitioners cannot seek amendment after the commencement of the trial those facts were well within knowledge. The petitioners cannot take advantage of their own lapses by attributing the same to the earlier Counsel representing them before the trial Court. Moreover, it is clear that the provision of Order VI Rule 17 of the Code of Civil Procedure casts an obligation upon the litigant applying for amendment, especially, after the commencement of trial to offer a sufficient and just explanation to the satisfaction of the Court so as to come to the conclusion, that in spite of due diligence the litigant could not raise the matter before the commencement of the trial. The proviso unequivocally stipulates that the Court shall not allow the application, unless it comes to the conclusion that in spite of due diligence, the petitioners could not seek the amendment before the commencement of trial.

12. The object behind this provision is to curb the mischief of unscrupulous litigants adopting dilatory tactics to delay disposal of the suit which defeats the right of the

adversary parties approaching the Court for quick relief and causes serious inconvenience to the Court. Further, its object is to expedite the hearing and not to scuttle it on one or the other pretext, more particularly by seeking such amendment at a belated stage. In fact, its purpose is to reduce the delay and ensure speedy disposal of the civil cases.

13. In the light of the aforesaid reasons, it is held that the trial Court is justified in rejecting the application so presented by the petitioner under Order VI Rule 17 r/w Section 151 and 153 of the Code of Civil Procedure at delayed juncture, particularly when the case was posted for final hearing. Resultantly, no error could be noted in the well reasoned order rendered by the trial Court while rejecting the application. The writ petition sans merit. Accordingly, the same is dismissed with costs.

(SACHIN S. DESHMUKH, J.)