

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 17826 OF 2025**

Smt. Rami wd/o Shanker Pachmuliya

..... PETITIONER

: VERSUS :

Shri. Vishnu Keshav Patel

.... RESPONDENT

Mr. M.A. Adenwala for the Petitioner.

Mr. Dinesh G. Mishra for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated: 1 APRIL 2026.

JUDGMENT :

1) By this petition, Petitioner-Defendant has challenged the order dated 11 November 2025 passed by the Appellate Bench of the Small Causes Court rejecting the Application at Exhibit-35 filed by the Petitioner/Defendant for amendment of the Written Statement.

2) Petitioner was a Defendant in RAE & R. Suit No. 449/851 of 2010 filed by the Plaintiff-landlord seeking her eviction on various grounds such as default in payment of rent, unauthorised additions and

alterations, nuisance/annoyance, commission of waste and injury to the suit premises and bonafide requirement. The suit has been decreed by the Trial Court on 30 November 2015 on only two grounds of default in payment of rent and questioning landlord's title. The rest of the grounds for eviction are rejected. Aggrieved by the Trial Court's decree dated 30 November 2015, the Petitioner/Defendant has filed Appeal No. 18 of 2016 before the Appellate Bench of the Small Causes Court.

3) In her appeal, which is pending since the year 2016, the Petitioner went on filing several applications, which in my view, are aimed mainly to delay the decision of the Appeal. She filed application at Exhibit-26 for framing of additional issues. She filed another application at Exhibit-27 under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence. Instead of arguing the said application for leading additional evidence alongwith final hearing of the Appeal, she pressed the said application under a hope of securing an order of remand. Both the applications were rejected vide orders dated 24 June 2020. She filed Writ Petition Nos. 7680 of 2021 and 7681 of 2021 challenging the orders dated 24 June 2020 on applications at Exhibits-27 and 26 respectively. In those petitions, the Petitioner was granted interim stay, which enabled her to continue in the suit premises on account of stay to the proceedings. One of the reasons for rejection of Petitioner's application at Exhibit-26 for framing of additional issues was absence of pleadings in the Written Statement relating to suit premises being on slum land. Petitioner accordingly grew wiser and during pendency of Writ Petition No. 7681 of 2021 challenging rejection

of application at Exhibit-26, she filed application at Exhibit-35 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the Written Statement. By impugned order dated 11 November 2025, the Trial Court has proceeded to reject the application at Exhibit-35 which order is the subject matter of challenge in the present Petition. Before proceeding further, it must be observed that by separate order passed today, Writ Petition No.7681 of 2021 has been rejected upholding the order dated 24 June 2020 which had application for framing of additional issues at Exhibit-26. By a separate order passed today, Writ Petition No. 7680 of 2021 is disposed of directing decision of application at Exhibit-27 for leading of additional evidence alongwith final hearing of the Appeal.

4) I have heard Mr. Adenwala, the learned counsel for the Petitioner and Mr. Mishra, the learned counsel appearing for the Respondent. I have gone through the reasons recorded in the impugned order. I have also considered records of the case filed alongwith the three petitions.

5) The Plaintiff's suit has been decreed on the grounds of default in payment of rent and questioning the title of the Plaintiffs. As observed above, Plaintiff tried every trick of delaying decision of the proceedings. She first filed application under Section 9A of the Code for framing and decision of issue relating to jurisdiction. However, at that time, she did not raise the issue of suit premises being slum land. After decree of the suit, she filed interlocutory applications before the

Appellate Court for leading additional evidence, framing of additional issues and for amendment of the Written Statement.

6) Leaving aside the issue of the Petitioner filing repeated interlocutory applications, I have considered the proposed amendment sought to be incorporated by the Petitioner in the written statement. Having gone through the proposed amendment, it is seen that the amendment is quite exhaustive in nature. The Schedule of amendment runs into 10 pages and paras-17 to 35 are sought to be incorporated in the Written Statement. The amendment is not only exhaustive but its length travels beyond the original Written Statement which ran into just 8 pages. Be that as it may. If the schedule to the amendment is perused, it is seen that the Petitioner is seeking to incorporate pleadings relating to absence of title of Plaintiff-landlord in respect of the suit premises. This issue has already been decided by the Trial Court while answering Issue Nos.3 and 4 which reads thus:

No.	ISSUES	FINDINGS
3	Whether plaintiff proves that defendant has denied the title of the plaintiff and disputed the relationship of landlord and tenant hence, liable for eviction?	Yes
4	Whether plaintiff proves that he is the landlord and owner of the suit premises and defendant is his tenant in respect of the suit premises?	Yes

7) Since the issues relating to title of Plaintiff in the suit premises was already framed and decided by the Trial Court, there is no question of permitting the Petitioner to amend the written statement at the

appellate stage. Written statement cannot be amended at this stage for filling in the lacunae in defence or for introducing new material which was already in the knowledge of the Petitioner or knowledge thereof, with due diligence, could have been easily acquired by her during trial of the suit.

8) The Appellate Court has also noted the fact that the Petitioner is attempting to introduce altogether new pleadings, which are inconsistent with the pleadings in the Written Statement. This is clear from the findings recorded by the Appellate Court in paras-12 to 14 of the order which reads thus:

12. Keeping the aforesaid legal position in mind, we have gone through the proposed amendment. Let us first consider what amendment the defendant seeks to incorporate in the written statement filed during the trial. The schedule of amendment runs into several paragraphs (i.e., 17 to 35). These paragraphs show that the defendant seeks to deny the plaintiff's ownership and put forth her case, which she has already done in the earlier written statement. The opening words of every paragraph show that "without prejudice to the above," the defendant makes reference to paragraphs 1 to 13 of the plaint. Thus, the defendant seeks to bring entirely new pleadings by replacing the old written statement during pendency of the appeal.

13. The schedule of proposed amendment opens with paragraph 17, which reads as follows:

"The undermentioned paras may be permitted to be added in the earlier written statement dated 29th Oct, 2010.

17. At the outset, this Defendant submits that if anything stated in the paras hereunder is contrary to the earlier written statement, then the averments of the earlier written statement may be deemed to have been made due to mistake, and the averments of earlier paras which are contrary be treated as deleted."

14. Thus, a reading of the aforesaid paragraph shows that the defendant seeks to withdraw the averments made in the written statement, stating that they were made due to mistake; however, which paragraphs or averments she seeks to delete has not been clarified. Paragraphs 18 to 36 introduce entirely new pleadings.

9) Since the amendment is at the appellate stage, it was necessary for the Petitioner to demonstrate due diligence. However, beyond pleading her old age and ill health, no other explanation is pleaded to demonstrate as to why the amendment was not sought during pendency of the suit. Petitioner also sought to blame her Advocate for drafting Written Statement contrary to her instructions. All these pretexts are not believed by the Appellate Bench by holding as under:

16. The defendant further stated that she is old and in ill health and, due to age-related problems, unable to hear properly. In paragraph 6, it is mentioned that during her cross-examination, which was conducted in Hindi, she did not understand what was recorded as her statement. She stated that her advocate had not explained the procedure to her. She attended the cross-examination for the first time after a long period following the filing of her affidavit of examination-in-chief and was totally unaware about it. She stated that she was not made to recollect her earlier examination-in-chief and the answers given therein. It is further mentioned that she did not give the answers recorded in cross-examination, and that the cross-examination was recorded based on presumptions between the learned trial judge and the plaintiff's advocate, while her own advocate, though present, was not given an opportunity to explain the questions to her. These reasons are not acceptable to a prudent mind. Had that been the case, her advocate would have raised objections and the same would have been recorded by the judge. Thus, to seek amendment after passing of an unfavourable decree, by alleging such grounds contrary to the earlier written statement, is not proper or correct.

10) Petitioner also sought to introduce new ground of premises being located on slum land, which was never her case in the Written

Statement. The Appellate Court has rightly rejected the said application by holding in paras-19 and 20 as under:

19. At this stage, the defendant now seeks to introduce an additional ground to the effect that the suit premises are situated within a slum area and, therefore, the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 would be attracted. Such a ground, however, could have been raised at the initial stage before the Trial Court when the written statement was filed and the issues were framed. The plea pertains to a matter of law and jurisdiction, and if the property indeed falls within a notified slum area, the same could have been demonstrated by producing documentary evidence before the Trial Court. Moreover, even assuming that such a contention involves a pure question of law, it is well settled that a legal point which does not require fresh evidence may be urged at the appellate stage without the necessity of amending the pleadings. The Appellate Court, while exercising its jurisdiction under Section 107 read with Order XLI of the Code of Civil Procedure, 1908, is fully empowered to consider such legal arguments while adjudicating the appeal, provided the same are borne out from the record or relevant statutory provisions. Therefore, there is no necessity to permit an amendment in the written statement merely for raising a legal plea which can be effectively canvassed and adjudicated upon in the course of the appeal itself

20. In view thereof, the proposed amendment, insofar as it seeks to introduce a new ground relating to the slum status of the property, appears to be an afterthought and does not satisfy the test of due diligence as contemplated under the proviso to Order VI Rule 17 of the CPC. The amendment, if allowed at this belated stage, would not only alter the nature of the defence but would also open up an entirely new line of contention which could and ought to have been raised earlier before the Trial Court.

11) I am in agreement with the above findings recorded by the Appellate Court. Also not permitting the Petitioner to incorporate the ground of suit premises being situated on slum land does not cause prejudice to her as the said contention can also be raised while opposing execution of the decree. Section 22 only requires prior permission of the competent authority for institution of suit in respect of a structure which

is constructed on a land declared as a slum. Such permission is also needed for execution of a decree.

12) The attempt on the part of the Petitioner to amend the Written Statement at a belated stage directly before the Appellate Court demonstrates complete lack of due diligence. The amendments are not necessitated by occurrence of any subsequent events. It is also aimed at introducing an altogether new case and for introducing inconsistent pleadings. The application for amendment is essentially filed for supporting the case for framing of additional issues. Amendment application was filed after realizing that additional issues cannot be framed in absence of pleadings. By a separate order passed today, this Court has already rejected the Petitioner for framing of additional issues.

13) That what is sought to be done by the Petitioner is akin to filing of a new suit and conduct of a fresh trial. At the appellate stage, she wanted to:

- (i) amend written statement by incorporating pleadings running into 10 pages when the original written statement is only of 8 pages,
- (ii) frame additional 9 issues
- (iii) lead additional evidence

Having lost before the Trial Court, Petitioner now wants to have afresh trial by amending written statement, framing of additional issues and leading of additional evidence.

14) I am fully convinced that the application for amendment was filed before the Appellate Court with the solitary purpose of somehow delaying decision of the Appeal so as to enjoy possession of the suit premises. The amendment application is not filed for bona fide purposes. Otherwise also, the amendment is neither necessary for determining the real question of controversy between the parties nor due diligence is demonstrated. The Appellate Court has rightly rejected the application for amendment.

15) The Writ Petition is devoid of merits. It is accordingly rejected.

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[SANDEEP V. MARNE, J.]