IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2128 OF 2018

M/s. Shant Snacks & Beer Bar
At 657/A-3, Shivaji Nagar,
Jangli Maharaja Road, Pune 411 004.
Through its Partner
Kamlesh Kishanlal Shahani ... Petitioner

v/s.

Shri Chandrakant Shankarrao Pethkar

2. Smt. Kumudini Chandrakant Pethkar

3. Shri Sachin Chandrakant Pethkar

4. Shri Abhijit Chandrakant Pethkar

5. Shri Jitendra Chandrakant Pethkar

R./at: Row House No.5, Shefali ka Heights,
Survey NO.110/1/A, Balwantpuram,
Shivthirth Nagar, Paud Road,
Kothard, Pune 411038. ... Respondents

Mr. R.A.Thorat, sr. advocate a/w. Girish Utangale & Pratibha Shelke i/b. M/s. Utangale & co. for petitioner.

Mr. Rafique Dada, sr. advocate i/b. Nitin P. Deshpande for respondents 1 & 2.

Mr. S.S.Patwardhan for respondent no.5.

CORAM : DAMA SESHADRI NAIDU, J.

6th September 2019.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. At times, though not always, advocacy amounts to an art of complicating the simple. Then, the adjudication ought to be simplifying the complicated. The success is a mixed bag, though.

3. There is a usual dispute between the landlord and the tenant; but there is an unusual development: that single dispute spiraling into six suits. Concerned at the conflicting causes, this Court wanted the parties to consolidate the cases—to bring the genie of litigation back into the bottle of one suit. The parties attempted it; but again, the genie seems to be all over the place.

4. The petitioner, a partnership firm, is the tenant; and the respondents are the owners. When the tenancy was subsisting, the owners purchased the property. Then the Firm filed Suit No.292 of 2006, for a declaration that it is the tenant; it also sought other incidental reliefs. Soon after that, the owners filed Suit No. 438 of 2006 for eviction, among other things, on the grounds of *bona fide* requirement.

5. Complained by the owners or on its own, the Pune Municipal

Corporation demolished a part of the tenanted premises. The owners, however, maintain that the Corporation demolished only illegal structures. Let us not enter this thicket of controversy.

6. The Firm, then, filed Suit No. 1711 of 2013 against the demolition. In that suit, the owners applied under section 9A of CPC; they questioned the maintainability of the suit. On 9 January 2015, the Civil Court allowed that application in part. In relation to certain reliefs, the suit was held not maintainable.

7. The Firm alleges that the owners raised a wall in the open space, which is said to be part of the leased property. The owners, of course, deny. They say the wall was raised on the property unconnected with the lease. That has led to another suit: Suit No. 281 of 2015. It was by the Firm for damages and injunction. In that suit, issues were framed and an affidavit-in-chief, too, was filed. The Firm wanted to mark a xerox copy of the tenancy agreement, dated 10th of May 1988. Faced with the problem of its admissibility, the Firm applied under Exhibit 108 for leading secondary evidence. It has also applied under Exhibit 124 for amending the area in its occupation. Initially, the Firm pleaded it had occupied 600 sq yards; now it wants that area altered as 1316.87 sq. ft.

8. Aggrieved, the Firm filed Writ Petition (L) No. 29158 of 2016 challenging the trial Court's Order, dated 2nd March 2015. We need not, it seems, refer to other suits here.

9. As a matter of parallel developments, the owners applied under Section 9A of CPC in OS No.281 of 2015. They raised jurisdictional issues and wanted the trial Court to reject the plaint. In April 2016, the trial Court partly allowed the Application. Aggrieved, the Firm filed Civil Revision Application No. 503 of 2016 before this Court impugning the trial Court's Order, dated 25th April 2016.

10. This Court consolidated both the writ petition and the CRA; it, then, advised the parties to narrow down the differences. It wanted the tenant to bring all its pleas—the subsequent developments after its filing the first suit—into the first suit. The parties agreed. Their consensus was recorded in the Minutes of the Order, dated 23rd March 2017. The next day, based on those Minutes of the Order, this Court disposed of both the writ petition and the CRA.

11. Acting on the Minutes of Order and this Court's Order, dated 24th March 2017, the Firm applied below Exhibit 154, in Civil Suit No. 292 of 2006, for amending the plaint. Then, on 5th December 2017, the trial Court partly allowed the Application. Aggrieved, the Firm filed this Writ Petition.

Submissions:

Petitioner:

12. Shri R.A.Thorat, the learned Senior Counsel for the petitioner, has submitted that initially the parties had six suits between them involving the same subject: the leased property. But each suit

covered the later developments to the previous suit. All of them could have stood on their own strength because each suit had a distinct cause of action. But, according to the learned Senior Counsel, when a couple of interlocutory orders reached this Court, it suggested to the parties to ensure that all the grievances on either side stand pleaded in one suit comprehensively. It is, perhaps, to avoid multiplicity of proceedings and conflict of judgments.

13. Shri Thorat has submitted that both the parties acted on this Court's advice and filed Minutes of Order, agreeing to proceed with one matter. Then on the strength of the Court's order, the Firm applied under Exhibit 154 before the trial Court to amend the pleadings in Suit No.292 of 2006. According to him, despite this Court's specific directive, the trial Court has erred in rejecting most of the reliefs the petitioner has sought in Exhibit 154.

14. Shri Thorat strenuously contended that the amendments sought are well within the bounds prescribed by this Court in its order, 24th March 2017. In the alternative, the learned Senior Counsel has submitted that the Firm has its right to amend the pleadings under Order 6, Rule 17 of CPC. And that right is independent of, and in addition to, its right under the Minutes of Order. So any plea or relief beyond the Minutes of Order stands covered by Order 6, Rule 17.

15. Shri Thorat has taken me through the Minutes of Order, the pleadings in Exhibit 154, and also the impugned Order. According to

him, most of the assertions in Exhibit 154 are subsequent developments; they ought to have been brought on record. About the reliefs, Shri Thorat contends that reliefs have already been sought in the other suits. If at all there is any variation in them, that variation is nothing but elaboration of the pleas already taken. Thus, the learned Senior Counsel has contended that the trial Court has erred in rejecting the Firm's application in part.

16. About the dispute concerning the extent of area under the Firm's occupation, Shri Thorat contends that this Court permitted the petitioner to urge that issue, too, during the trial. Unless the Firm brings that aspect on record by amendment, it cannot establish that fact by leading evidence because no amount of evidence can rescue the case without a foundation of pleading. Therefore, he has urged this Court to allow the petition.

Respondents:

17. Shri Rafique Dada, the learned Senior Counsel for respondents, has first addressed the issue of amending the area of tenancy. According to him, the petitioner, first, consciously pleaded that the area is 600 sq. feet, but now it wanted that area expanded to 1316.87 sq. feet. Shri Dada contends that if the amendment were to be allowed, it would take away an admission, and that is impermissible. At any rate, the learned Senior Counsel has submitted that this Court granted liberty to the Firm to adduce evidence and establish its plea

about the vacant land but not the constructed portion of the lease.

18. The learned Senior Counsel has also strenuously contended that the trial Court has earlier upheld the owners' contentions and objections under Section 9A of CPC. Aggrieved against those findings, the Firm approached this Court, but it did not take those proceedings to their logical end. Instead, it only withdrew those proceedings; that is, on the Firms' request, this Court closed those proceedings. So the Firm cannot, in the guise of an amendment, resurrect in the guise of an amendment whatever the trial Court has rejected.

19. According to Shri Dada, whatever is not permissible directly is still impermissible indirectly. Then, turning to the Firms' attempt under Exhibit 154 to amend the pleadings in C.S. No.292 of 2006, he contends that the Firm is attempting to bring in through back door whatever has already been rejected by the trial Court and whatever, thus, has attained finality. Shri Dada has tabulated the reliefs the petitioner originally sought and the reliefs now the Firm sought under Exhibit 154. In that context, the learned Senior Counsel asserts that the amendments are not clarificatory. On the contrary, the Firm wanted to plead afresh not only the facts for the first time but also the reliefs which are beyond the causes of action it had initially pleaded. Therefore, Shri Dada has urged this Court to dismiss the writ petition.

20. Heard the learned Senior Counsel Shri R. A. Thorat for the petitioner, and learned Senior Counsel Shri Rafique Dada, instructed

by Adv. Shri Nitin Deshpande, for the respondents.

Discussion:

21. The question is whether the Firm wanted the amendments beyond this Court's Order, dt.24th March 2017, which, in turn, was based on the previous day's Minutes of Order.

The Scope of this Court's Order, dated 24th March 2017:

22. By the consent of the parties, this Court disposed of the Writ Petition and the Civil Revision Application. From this Court's Order, three issues emerge: I, II, and III.

(I) Leading Secondary Evidence.

(II) Amendment regarding area.

(III)Amendment of pleadings in Civil Suit No.292 of 2006.

Issue I: Leading Secondary Evidence:

23. The Firm, as this Court has held, will have to withdraw the Application below Exhibit 108 in Suit No.296 of 2006. It was taken out seeking the trial Court's permission to lead Secondary evidence. Now, as per this Court's Order, dated 24th March 2017, the Firm will apply once again by furnishing additional information. And if necessary, it may seek the "permission to lead secondary evidence in addition to Agreement of Tenancy, dated 10th May 1988. The Trial Court will deal with same in accordance with law." So the amendment is a non-issue here. It is left open.

Issue No.II: Amendment of Area:

24. First, the Firm applied below Exhibit 124 to amend the built up are from 600 sq. ft., to 1316.87 sq. ft. It was rejected through Order, dt.10.07.2015. Later, this Court in the Order, dt.24.03.2017, has held that it is open for the Firm to establish its case "including the question as to whether the [Firm] is the tenant of open land admeasuring 4342 sq. ft., by producing on record all relevant documents and "by placing reliance on the same in the application for amendment." It does not concern the built-up area, though.

25. Here, in the impugned Order, the trial Court has rejected this relief. I reckon the Firm's effort is to place an alternative extent of area on record; it concerns the built-up area. The question is does it have the effect of taking away an admission? First, the Firm has the Court's leave about whether it is the tenant of the open land admeasuring 4342 sq. ft. I reckon it has no such liberty about the built-up area. I can only hold that if the built-up area is more than what has been pleaded, it is a matter of fact—and a verifiable one, at that. The Firm may lead evidence on that question, and the landlords, too, can contest the Firm's evidence on the actual extent of the built-up area. Thus, the actual built-up area is a matter of evidence and it is left open.

Issue No.I:

26. It is two-fold: (a) transporting the pleadings from 2015 suit to 2006 suit; (b) incorporating the reliefs the same way. The incorporation of the reliefs suffers from a limitation. Earlier, the

owners applied under Section 9A of CPC in Suit No.281 of 2015. They wanted the trial Court reject certain reliefs the Firm sought, as beyond the Small Cause Court's jurisdiction. Through Order, dt.25.04.2016, the trial Court partly allowed that application. It has held prayers (a) to (e) as beyond its jurisdiction. Against this Order, the Firm filed Civil Revision Application No. 503 of 2016. Now this CRA stands withdrawn. So, in that context, what governs is the Minutes of Order. Nothing beyond.

27. From the Order, I gather that the Firm can merge the pleadings, including the relief, of Suit No.281 of 2015 with those of Civil Suit No.292 of 2006. It is a virtual amalgamation of the two suits. But it must be subject to whatever has happened in Suit No.281 of 2015. That means, we cannot ignore the Section 9A application in that suit and its outcome: the trial Court has held that it has no jurisdiction to entertain reliefs (a) to (e). CRA No.503 of 2016 concerned the jurisdictional issues in OS No.281 of 2015. Now, that CRA withdrawn, whatever the trial Court held in that suit as beyond its jurisdiction cannot be revived.

28. As to transporting the pleadings from OS No.281 of 2015 to Suit No.292 of 2006, we need to pay attention to one thing. If the importation is direct, it presents no problem. But here, it is a little different. Some pleadings sought to be incorporated elaborate on what was pleaded in Civil Suit No.281 of 2015. And some concern, it seems,

the later developments. The question is, can those later developments be permitted for they may, strictly speaking, fall beyond this Court's permission in its Order, dated 24th March 2017.

29. On this count, the Firm argues that even without this Court's Order, it has an independent right to bring the later developments on record under Order 6, Rule 17 of CPC. At any rate, it contends that those amendments are essential to resolve the controversy in issue and do not prejudice the owners. So we will consider only those amendments that have been rejected.

30. We will consider them tabularly as presented by the respondent-owners.

	Paragraphs sought to be inserted by way of amendment application exh. 154 in C. S. No. 292 of 2006 (With observations in the Impugned Order)	Corresponding paragraphs in earlier application/ suit.
1.	16B Not permitted. (does not seem to be subsequent event)	Para. 7 in C. S. No. 281 of 2015
2.	16C -Not permitted. (does not seem to be subsequent event)	Para. 8 in C. S. No. 281 of 2015
3.	16D -Not permitted. (does not seem to be	Para. 9 of C. S. No. 281 of 2015

	subsequent event)	
4.	16E -Not permitted. (does not seem to be subsequent event)	Para. 10 of C. S. No. 281 of 2015
5.	16F -Not permitted. (does not seem to be subsequent event)	Para. 11 of C. S. No. 281 of 2015
6.	16G -Not permitted. (only elaboration. But gist is already mentioned in existing para. 6 and known to Plaintiff. Hence outside the scope of liberty.)	Para. 12 of C. S. No. 281 of 2015
7.	16H -Not permitted. (only elaboration. But gist is already mentioned in existing para. 6 and known to Plaintiff.)	Para. 13 of C. S. No. 281 of 2015
8.	16S -Not Permitted. (about filing of suit by Plaintiff. Not appropriate contention which connect the proposed amendment)	Para. 25 & 26 of C. S. No. 281 of 2015

31. The above paragraphs of pleadings have already existed in C. S. No.281 of 2015. Their relevance has so far not been tested, unlike the reliefs which were scrutinised in Application under Exhibit 108,

that is an application under Section 9A of CPC. In fact, this Court allowed the Firm to incorporate the pleadings from C. S. No.281 of 2015. So, if they have already existed, their relevance cannot be questioned now. As a result, I hold that the impugned order suffers to that extent of rejecting the incorporation of the above paragraphs. I set aside the order to that extent. Consequently, I direct the trial Court to permit the Firm to incorporate those paragraphs in C S No.292 of 2006.

32. Now we will examine the other paragraphs, which are sought to be introduced for the first time. The Firm's contention is two-fold: those paragraphs are explanatory or clarificatory; it also maintains that some of them are, in fact, later developments. Much may not turn on clarificatory pleadings, for under Order 6 the pleadings shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence. It should not contain evidence by which he has to prove his claim.

33. About the subsequent events, unless they prejudice they need not be rejected merely on the grounds that they have not been pleaded in C. S. No.281 of 2015. As the Firm has contended, it may have its independent right still intact under Order 6, Rule 17 to bring on record subsequent events. Instead of driving the Firm to another interlocutory round, we had better consider whether they could be allowed. Or, in other words, we may consider whether the trial Court has committed

any error in rejecting them.

	Paragraphs sought to be inserted	No corresponding paragraph
9.	16T -Not Permitted. (already covered in original plaint. Therefore, not subsequent events.)	NOT a part of C. S. No. 281 of 2015
10.	16V. -Not Permitted. (not subsequent events though necessary to decide controversy between the parties)	NOT a part of C. S. No. 281 of 2015
11.	16W. -Not Permitted. (not subsequent events though necessary to decide controversy between the parties)	NOT a part of C. S. No. 281 of 2015
12.	16X. -Not Permitted. (no specific observation.)	Para. 28 of C. S. No. 281 of 2015

34. Paragraph 16T was not permitted on the premise that it has already been covered in the original plaint. So it is not felt to be a subsequent event. Paragraph 16V speaks of the Firm's correspondence with the previous owner. It is not, as the trial Court has held, a subsequent event. I agree.

35. Paragraph 16W, too, concerns the previous owner—rightly

rejected by the trial Court. And, finally, paragraph 16X. This paragraph concerns the previous judicial proceedings. It is a matter of public record. Its rejection, I reckon, may amount to hyper-technicality.

35. So I allow paragraphs 16T and 16X to be incorporated in C S No.292 of 2006, but not paragraphs 16V and 16W.

36. This Court's direction in its earlier order dated 24th March 2017 about speedy disposal remains. Given the later round of litigation, the time frame earlier fixed needs to be re-fixed. As a result, I hold that the trial Court will endevour to dispose of the suit expeditiously in nine months. For any reason, if the trial Court cannot dispose of the case by then, it may apply to this Court for extension.

37. The parties must proceed with the matter whenever the trial Court posts the matter. And adjournments, if any, are entirely within the trial Court's discretion.

In the manner indicated above, I allow this writ petition in part. The rule is made absolute in the above terms. No order on costs.

[DAMA SESHADRI NAIDU, J.]

L.S.Panjwani, P.S.