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30.11.2012

Present:- Mr. Ramesh Saraf, Advocate for petitioner.

C.M. (M) No. 1065/2012 & CM No. 16825/2012

This petition assails the order dated 13.07.2012 whereby application U/o 6 rule 17 CPC filed by the petitioner (respondent in the eviction petition) was dismissed.

The respondent (petitioner in the eviction petition) had filed eviction petition against the petitioner u/S 14 (1) (a) of DRC Act. In the written statement filed by the petitioner herein, he had denied the relationship of landlord and tenant between the parties and had claimed that her predecessor was in adverse possession of the suit premises built up on Gaon Sabha land. Since the said plea was taken, the order U/S 15 (1) of DRC Act was declined as the petitioner herein had disputed the relationship of landlord and tenant.

An application U/o 6 rule 17 CPC was filed by the petitioner seeking amendment in the written statement stating that in another suit bearing No. 137/2011 filed by her against the respondent and others including DDA, it came to be known that the suit premises was acquired by DDA. Consequently, the petitioner sought to amend the written statement by incorporating plea in this regard. The said application has been disallowed observing that the question of ownership of the premises was not in question and need not be gone into the instant petition U/s 14 (1) (a) of DRC Act. There is no dispute that there was no necessity to go into such a question of ownership of the suit premises. However, it is essential for the

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landlord to prove the existence of relationship of land-lord tenant in a petition u/s 14 (1) (a). When the petitioner had already in the written statement taken the plea and disputed the relationship of landlord and tenant and whereupon order U/s 15 (1) was disallowed, the amendment sought is nothing, but an additional plea in this regard. Thus, the sought amendment cannot be said to be not relevant or necessary. Thus, the petition is allowed.

Dasti.



M.L. MEHTA J.

NOVEMBER 30, 2012

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