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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11661 OF 2015

Laxminarayan Shankarlal Mantri ..PETITIONER
(Ori. Defendant)

VERSUS

Kamalnayan Hiralal Mantri ..RESPONDENT
(Ori. Plaintiff)

Mr S.V. Adwant, Advocate for petitioner

**CORAM : N.W. SAMBRE, J.
DATE : 5th December, 2015**

ORAL ORDER :

By the present petition, the petitioner-original defendant, questions the legality and validity of the order dated 16th September, 2015, passed by 3rd Joint Civil Judge Junior Division, Jalgaon, below Exh.41, in Regular Civil Suit No.163 of 2004, whereby the prayer for amendment of plaint, made on behalf of the respondent-original plaintiff, came to be allowed.

2. It is the case of the petitioner-defendant, that the order impugned, allowing Exh.41 for amendment of plaint, is not in tune with the requirement of Order VI, Rule 7 of the Code of Civil Procedure, as according to him, the suit was instituted in 2004 and the amendment is sought to be incorporated after almost a period of nine years of filing of the suit. He would then urge that the since the trial has commenced and

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the suit has progressed, the amendment ought not to have been granted, which is not germane for deciding the issue raised in the plaint. According to the petitioner the amendment as is sought to be incorporated, changes the nature of pleadings for seeking possession of the suit premises, as the pleadings in support of claim of the plaintiff were not incorporated and as such, a new case is sought to be introduced by amendment.

3. With the assistance of learned Counsel appearing on behalf of the petitioner, I have perused the contents of the application for amendment, the reply submitted by the petitioner-defendant and the order impugned and it is noted that the suit is fixed for cross-examination of the plaintiff. At this stage, the amendment in question is moved, as such, the learned Counsel was right in pointing out that the trial in the suit has commenced. However, in the aforementioned background, it is required to be analyzed, whether the suit has reached at advance stage warranting rejection of amendment of application. It is noted that it is the plaintiff, who has sought amendment in the suit, which came to be granted. Upon perusal of the pleadings which are sought to be added by virtue of amendment, it is noted that the said pleadings are explanatory to the pleadings which are already existing, as regards seeking possession of the suit property, on account of personal need of the plaintiff-landlord. It is also required to be noted that by grant of amendment, no prejudice will be caused to the petitioner, particularly even if the trial has commenced, as the petitioner-tenant has yet to commence with the cross-examination of the plaintiff.

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4. In my view, the amendment as is granted by the Trial Court, is in tune with the requirement of Order VI, Rule 17 of the Code of Civil Procedure. No case for interference in extraordinary jurisdiction of this Court is made out. Thus, the petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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