

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7514 OF 2014

Khodayar A. Attie

.. Petitioner

Versus

Jaimala Ramesh Churi

.. Respondent

Mr. D. B. Savant, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 24th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 09.06.2014 passed by the Learned Judge, of the Small Causes Court, Mumbai, by which order the application Exh.4 filed by the Plaintiff for amendment of the plaint so as to incorporate two additional grounds i.e. ground of reasonable and bonafide requirement and subletting was allowed to be incorporated in the plaint. The suit in question has been filed for eviction of the Petitioner/Defendant from the suit premises in question. It appears that the evidence of the Plaintiff was closed some time in the year 2009 and the evidence of the Defendant had started. It is thereafter that the instant application Exh.4 came to be filed. In view of the mandate of Order VI Rule 17 of the CPC, it was averred by the Defendant that after he had engaged a new advocate that the said

advocate found that the ground of reasonable and bonafide requirement was not incorporated in the plaint which he brought to the notice of the Plaintiff and it is therefore the case of the Plaintiff that though the said ground was one of the grounds on which the Plaintiff had instructed the advocate to file the suit, the earlier advocate had not inserted the said ground. In so far as the second ground i.e. subletting is concerned, justification given was that the cause of action had arisen after the filing of the suit and therefore the application for incorporating the ground of subletting could not be filed earlier.

2. The said application was replied to on behalf of the Defendant by filing his reply which was numbered as 42 and the amendment sought was sought to be opposed. The Trial Court considered the said application Exh.4 and has by the impugned order dated 9th June 2014 allowed the same. The reason mentioned by the Plaintiff that though instructions were given to the earlier advocate the said ground of bonafide requirement was not incorporated commended acceptance to the Trial Court. In so far as the second ground is concerned, the Trial Court in view of the fact that the events which have been mentioned have transpired after the filing of the suit held that the amendment on the said basis would have to be allowed as the cause of action has arisen after the filing of the suit. The Trial Court therefore came to a conclusion that the Plaintiff has satisfied the due

diligent test. The Trial Court further observed that in view of the amendment allowed, the Defendant can file his written statement. The Trial Court did not countenance the objection on the ground of limitation raised on behalf of the Defendant as the Trial Court was of the view that the ground of limitation can be gone into in the suit. In my view, having regard to the reasons mentioned in the impugned order and also having regard to the fact that allowing the amendment application would result in the avoidance of multiplicity of proceedings. The order passed by the Trial Court does not merit any interference at the hands of this Court in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]