

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11753 OF 2015**

1 Javerben Kantilal Chheda)
aged 56 years, Occupation Housewife)
residing at 3rd floor, Botawala Building)
Thakurdwar, Girgaon Road, Mumbai-2)

2 Javerben Chaganlal Chheda)
aged 51 years, Occupation Housewife)
residing at Hema Sadan Building,)
3rd floor, Chadaverkar Lane,)
Opp Shiv Sena Office, Borivali (West))
Mumbai 400 092)

3 Vimlaben Ratilal Chheda)
aged 42 years, Occupation Housewife)
residing at Block No.147, A Wing, 13th)
floor, Ganjawala Apartment, Ganjawala)
Lane, Near Chamunda Circle)
Borivali (West) Mumbai 400 092)

4 Kanchanben Pravin Cheeda)
aged 40 years, Occupation Housewife)
residing at Room No.1, Ground floor)
Mangalwadi Kumar Vilas, Girgaon Road)
Mumbai 400 004)

..Petitioners

Vs.

1 M/s Epcos Sons)
A partnership firm, having its office,)
At 172, Kambekar Street, Bombay-3)

2 Bhavesh Pravin Gandhi)
aged about 50 years)
residing at 6, Islampura Street,)
Hararwala Building, Opp Moti Talkies)
Mumbai 400 004)

3 Pravin T. Gandhi)
aged about 80 years)

residing at 6, Islampura Street,)
Hararwala Building, Opp Moti Talkies)
Mumbai 400 004)

4 M/s Epco Traders)
A firm, carrying on business at)
172, Kambekar Street, Bombay-3)

5 Pravin T Gandhi)
HUF through its Manager and Karta)
Mr. Pravin T. Gandhi, carrying on)
Business at 172, Kambekar Street,)
Bombay 400 003)

..Respondents

Mr. S. N. Vaishnawa a/w Ms Nuper Mukherjee i/b N. Vaishnawa & Co. for
the Petitioners

Mr. R. R. Yadav for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 8th DECEMBER, 2015

ORAL JUDGMENT

1 Rule with the consent of the Learned Counsel for the parties made
returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order
dated 21-9-2015 passed by the Learned Judge of the Small Causes Court by
which order, the application for amendment of the plaint in terms of the
schedule to the said application came to be rejected.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners are the original Plaintiffs who have filed the Suit in question being L.E. & C. Suit No.177/215 of 2013 for eviction of the Respondent Nos.1 to 3 herein who the Plaintiffs claim are their licensee. It is pursuant to the Written Statement filed on behalf of the Defendant Nos.1 to 3 wherein they pointed out that they have surrendered the premises to the earlier landlord who in turn has let out the premises to them, that the cause for filing the instant application for amendment of the plaint arose. The said application was replied to on behalf of the proposed Defendants.

4 The Trial Court has considered the said application and has by the impugned order dated 21-9-2015 rejected the same. The Trial Court has rejected the application inter alia on the ground that the Plaintiffs by seeking the said amendment are trying to change the nature of the Suit meaning thereby that the Suit filed for eviction of a licensee is sought to be changed to a Suit for eviction of a tenant. The application is also rejected on the ground that if the application is allowed, the advantage if any which has been gained by the Defendants would be taken away, as also the application is rejected on the ground of delay in moving the application.

5 The Learned Counsel for the parties sought to make submissions

for and against the amendment application being allowed.

6 In my view, having regard to the nature of the amendment sought which is restricted to arraying the Respondent Nos.4 and 5 as party Defendants to the Suit and to incorporate paragraph 1(a) in the Complaint, the Trial Court has erred in rejecting the application. It is required to be noted that the Plaintiffs in seeking the said amendment are not changing the nature of the Suit which will continue to be a Suit for eviction of a licensee, as it is the case of the Plaintiffs that the proposed Defendants continue to occupy the premises as licensee's and not the tenant. The case of the proposed Defendants that they are the tenants would obviously be tested by the Trial Court at the trial of the Suit and in the event, the proposed Defendants succeeded in proving that they are the tenants then the Suit in question would meet the fate, which a Suit filed for eviction of a licensee would meet. However, since the trial is at the initial stage, with a view to have a complete and effectual adjudication of the suit in question, it would be just and proper to permit the amendment so as to array the proposed Defendants as party Defendants to the Suit as they are admittedly in possession of the premises in question. In that view of the matter, the impugned order is required to be quashed and set aside and is accordingly quashed and set aside. The amendment application would stand allowed, resultantly the Plaintiffs would be entitled to amend the Complaint in terms of the schedule. Amendment to be carried out within two weeks from date. Amended copy to be served on the

other side. The Plaintiffs to pay costs of Rs.5000/- to the Respondent Nos.4 and 5 herein within the aforesaid period.

7 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]