IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1006 OF 2016

Mohammed Ismail Suleman : Petitioner.
Versus
Mrs. Zahida Zubair Merchant : Respondent.

Mr. V R Tripathi for the Petitioner.
Mr. Owen Menezes i/by Mr. Sean Wasoodew for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 08th February 2016

P.C.

1 The order dated 21/12/2015 passed by the learned Judge of the Small Causes Court at Mumbai allowing the Application (Exhibit 29) for amendment of the plaint filed by the Respondent herein is taken exception to by way of the above Petition.

2 The suit in question being T.E. Suit No.159/207 of 2010 has been filed for eviction of the Petitioner original Defendant from the suit plot of land which was let out to them. It seems that the tenancy of the Defendant in respect of the said plot of land has been terminated by the letter dated 06/05/2010. It is an undisputed position that there is one structure on the said plot of land which is presently in occupation of the Defendant. The said fact has also come on record by way of the averments made in the written statement filed by the Defendant. By the amendments sought in the plaint, the

Plaintiff seeks to claim the amount of property tax which has allegedly been paid by the Plaintiff, pursuant to the assessment made by the Municipal Corporation for Greater Mumbai. The substantive relief sought by way of amendment is that the Defendant be directed to deposit the property tax in respect of the structure in question which has been paid by the Plaintiff and which was sought to be recovered from the retrospective date i.e. the year 2010.

3 The amendment was opposed to on behalf of the Defendant by contending that the suit being a T.E. Suit for eviction of the Defendant from the plot in question, the relief sought vide amendment application would change the nature of the suit. The said contention raised on behalf of the Defendant was not accepted by the Trial Court as the Trial Court was of the view that the construction being on the suit plot of land and since the Plaintiff is seeking to recover property tax in respect of the said structure, the nature of the suit would not change. The Trial Court has also observed that it is not necessary to go into the merits of the case sought to be introduced by way of amendment as the same can be gone into at the appropriate stage.

4 In my view, having regard to the reasons mentioned in the order, no case for interdiction in the writ jurisdiction of this Court is made out. However, it is clarified that the contention of the parties on merits are kept

open including on the point of limitation. With the aforesaid directions, the above Writ Petition is dismissed.

[R.M.SAVANT, J]