

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

WRIT PETITION NO.6464 OF 2014

Mr. Narayan Hudda Amin ... Petitioner

V/s.

Nandan Agro Tech Pvt. Ltd. ... Respondent

Mr. Jaydeep Deo for the petitioner.

Mr. Mayur Khandeporkar a/w Mr. Rushabh Thakkar, Ms.Pooja P. Batra i/b Ms.Bodhanwalla & Co. for the respondent.

CORAM: K.K. TATED, J.

DATED : 22nd APRIL, 2016

PC. :

. Heard learned counsel for the parties. By consent taken on board for final hearing at the stage of admission itself.

2. This writ petition is preferred by the defendant under Article 227 of the Constitution of India challenging the impugned order dated 22/4/2013 passed by 5th Additional Judge, Small Causes Court, Pune below Exh.124 in Civil Suit No.82/2007 partly allowing the respondent/plaintiff's application under Order 6 Rule 17 of CPC for carrying out appropriate amendment in the plaint.

3. Learned counsel on behalf of the petitioner/defendant submits that the Trial Court erred in coming to the conclusion that

the respondent/plaintiff has made out a case in its application for carrying out amendment in the plaint. He submits that in the present petition the respondent/plaintiff has filed the suit in the year 2007 for peaceful possession of the suit premises i.e. Room No.1 and 2 ad-measuring about 260 sq. ft. situated on western side (north-west corner) of the three storied bungalow located on the ground floor which is part and parcel of C.T.S. No.1288, Final Plot No.673 of Bhamurda situated at eastern side of Jangli Maharaj Road, Shivajinagar, Pune on the ground of bonafide requirement of his company affairs and to make provision for residence of directors. Thereafter plaint was amended on 19/7/2013. He submits that the defendant filed the written statement. Thereafter the Trial Court framed issues. The plaintiff filed its affidavit of evidence and the defendant completed the cross examination. Thereafter at that stage the plaintiff filed an application under Order 6 Rule 17 of CPC on 15/12/2012 for carrying out amendment in the plaint. The Trial Court failed to appreciate that after framing issues, completion of evidence so also cross examination of PW-1, the plaintiff filed an application for amendment. He submits that in view of provision of Order 6 Rule 17, amendment cannot be granted once the trial begins. He submits that the plaintiff in its plaint pleaded that the plaintiff requires the suit premises for residential purposes of its directors. He submits that by way of amendment, the plaintiff wants to enlarge its requirement and that cannot be permitted. Hence, the order passed by the Trial Court on 22/4/2013 below Exh.124 is

required to be set aside. He submits that if the impugned order is not set aside, the same would cause irreparable loss to the defendant.

4. On the other hand, learned counsel appearing on behalf of respondent/plaintiff vehemently opposed the present petition. He submits that after considering the pleadings of both the sides, the Trial Court partly allowed the plaintiff's application for carrying out amendment in the plaint. There is no substance in the present writ petition and the same is required to be rejected.

5. The main contention raised by the advocate for the defendant is that initially the plaintiff pleaded that the plaintiff requires the suit premises for its directors residence and now by carrying out amendment the plaintiff wants to enlarge the scope of its requirement i.e. also for their other employees. It is to be noted that the plaintiff in paragraph 8 of the plaint has specifically stated that the plaintiff requires the suit premises for company affairs and to make provision for residence of its directors. The word "company affairs" include all necessity of the company. i.e. for directors, other employees and for companies officers.

6. Considering these facts and after perusing the order passed by the Trial Court on 22/4/2013, I do not find any reason to entertain the present writ petition. Hence, the same stands dismissed.

7. Without influencing the observations made by this Court, the Trial Court shall proceed with the matter on its own merits.

8. Learned counsel for the petitioner/defendant seeks stay of this order. Considering the impugned order passed by the Trial Court and paragraph 8 of the plaint, I do not find any reason to stay the order. Hence oral request made by the petitioner is rejected.

(K.K. TATED, J.)