

JPP

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

WRIT PETITION NO. 9626 OF 2016

Mr. Nazir Ahmed Dingmar. ... Petitioner.

V/s.

Yasin Mohammed Hanif Khalifa & Ors. ... Respondents.

Ms. A.R.S. Baxi a/w. Nitesh Zimur for the Petitioner.

Mr. R. Fernandes for Respondent 1.

CORAM : N.M. Jamdar, J.

20 September, 2016.

Oral Order :-

By the impugned order dated 6 February 2016, the learned Civil Judge, Senior Division, Daman has allowed the application for amendment of the plaint taken out by the Respondent – Plaintiff.

2. The learned Counsel for the Petitioner submitted that the amendment which has been granted under Section 22 of the Specific Relief Act will change the nature of the Suit and ought not to have been granted.

3. Though the learned Civil Judge while granting the amendment has referred to the Specific Relief Act, amended portion

needs to be seen alongwith the prayers made in the Suit. In the Suit, prayer is made for a declaration that the Plaintiff is the owner of a particular premises and has sought possession as well as relief of injunction. In the amended portion the Respondent has sought compensation without prejudice to his claim to possession of the shop. It prayed in the alternative, that in case the Court comes to the conclusion that possession ought not to be granted, the Petitioner is entitled to the compensation. In the amended portion therefore, an alternate relief of compensation in lieu of possession of shop has been sought. There is no prayer neither any averment that the compensation is sought in lieu of specific performance. Therefore, the apprehension expressed by the learned Counsel for the Petitioner does not arise.

4. In any case, all contentions of the Petitioners as regard the amended portion open to be argued on merits in the Suit. It is open to the Petitioner to file an additional written statement. The contention of the Petitioner that if such relief cannot be granted in favour of the Respondents – Plaintiffs, it is also kept open to be urged on merits. Writ Petition is accordingly disposed of.

(N.M. Jamdar, J.)