

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

CIVIL WRIT PETITION NO. 12360 OF 2015

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Dr. Ajit Bhaskar Oke ...Respondent
Age 57 years, Occupation: Medical Practitioner
of Mumbai Indian Inhabitant,
residing at Flat No.D-57, 3rd floor, Goodwill
Assurance Building, Manmala Tank Road,
Mahim, Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12355 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Mr. Shashikant Vaman Kale ...Respondent
Age 73 years, Occupation: A Retired,
of Mumbai Indian Inhabitant, residing at
25/B.T.C. No.3027, Goodwill Assurance
Building, Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12356 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Mrs. Shobha Ashok Ambekar ...Respondent
Age 66 years, Hindu, Indian Inhabitant,
Occupation: Household
residing at Flat No.B-23, 2nd floor,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12357 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Mr. Ajit Kumar Krishnaji Modak ...Respondent
Aged 61 years, Hindu, Indian Inhabitant,
residing at Flat No.29/C, Ground floor,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12358 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Smt. Meera Madhukar Padhye ...Respondent
Aged 82 years, Hindu, Indian Inhabitant,
Occupation: Household
residing at Flat No.D-52, 2nd floor,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12359 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Dr.Smt. Shaila Prakash Bhatawdekar ...Respondent
Aged 68 years, Hindu, Indian Inhabitant,
Occupation: retired Govt. Officer
Residing at Flat No.A-15, Ground Floor,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12361 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Suhas Janardhan Apte ...Respondent
Aged 61 years, Occupation: Employed,
of Mumbai Indian Inhabitant, residing at
Flat No.50, 1st floor, Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12362 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Smt.Padmaja Nilkanth Damle ...Respondent
Aged 59 years, Hindu, Indian Inhabitant,
Residing at Flat No.41/42, 3rd floor,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12363 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Dr. Pradeep Gopal Talwalkar ...Respondent
Aged 62 years, Hindu, Indian Inhabitant,
Occupation: Medical Practitioner,
Residing at D-56, 3rd floor, Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

**WITH
CIVIL WRIT PETITION NO. 12364 OF 2015**

Life Insurance Corporation of India ...Petitioner
a Statutory Authority, established under
Life Insurance Corporation Act, 1956,
having its Western Zonal Office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

Vs.

Mr. Subodh Vasant Sapre ...Respondent
Aged 68 years, Hindu, Indian Inhabitant,
Residing at Flat No.26/27,
Goodwill Assurance Building,
Manmala Tank Road, Mahim Mumbai 400 016.

Mr. Shrinivas Bhavé i/b. Bhavé & Co., for the Petitioners in all the
Petitions.

Mr. Ajay Kumar for the Respondents in all the Petitions.

**CORAM : R.M.SAVANT, J.
DATED : 18TH FEBRUARY, 2016**

ORAL ORDER:

1. Rule in all the Petitions. With the consent of the learned

Counsel for the parties made returnable forthwith and heard.

2. The above Writ Petitions filed by the Petitioner / original Defendant take exception to identical orders dated 15th January, 2015 passed by the learned Judge of the Small Causes Court, Mumbai by which orders the applications filed by the Respondents / original Plaintiffs for amendment of the plaint in terms of the schedule to the said applications came to be allowed and the Respondents ie., the original Plaintiffs were allowed to amend the plaint in terms of the schedule thereof. The parties would be referred to as the Plaintiff and the LIC.
3. Since the facts involved in all the Petitions are identical and since the orders passed are also identical, Writ Petition No. 12360 of 2015 would be treated as the lead matter and the facts of the said case would be referred to for the sake of convenience.
4. The Respondent in Writ Petition No.12360 of 2015 is the original Plaintiff who has filed the Suit in question against the LIC for a declaration that the Plaintiff is a lawful monthly tenant in respect of the suit premises bearing flat No.D-57, 3rd floor at

Goodwill Assurance Building, Manmala Tank Road, Mahim, Mumbai-400 016. It is averred in the plaint that the original tenant Mrs. Sushila Bhaskar Oke died on or about 8th November, 2007 and pursuant to her death the Plaintiff by his letter dated 8th June, 2008 informed the LIC and requested it to transmit the tenancy in his favour. It seems that the LIC by its letter dated 16th June 2008 called upon the Plaintiff to submit the documents as stated in the said letter. The Plaintiff by his letter dated 8th August 2008 submitted the documents as demanded by the LIC. It is further averred that the LIC by its letter dated 4th November 2008 which was in response to the plaintiff's letter dated 8th August 2008 accepted the documents submitted by the Plaintiff, but informed the Plaintiff that the tenancy will be transferred on leave and license basis or on lease basis as per the Estate Policy of the LIC. It is averred by the Plaintiff that the said conditions are not in consonance with the Maharashtra Rent Control Act 1999. It is further averred that the Plaintiff is residing in the suit premises and continues to pay the rent to the LIC, which is being accepted by it, but has been issuing receipts for the said rent in the name of the deceased tenant Smt. Sushila Bhaskar Oke, which according to the Plaintiff is against law and amounts to a fraud. It is further

averred that though the LIC has been called upon to transfer the tenancy for which the other heirs have also given their consent, the LIC is delaying the same on the specious ground that it would be considering the same on the basis of its Estate Policy. It is further averred that the condition sought to be imposed by the LIC of permitting the Plaintiff to occupy the suit premises on Leave and License basis or on Lease basis is not acceptable to him. The Plaintiff is, therefore, constrained to file this Suit in question and seeks declaration in respect of tenancy in respect of the suit premises.

5. Hence, it is the case of the Plaintiff as can be culled out from the averments that the original tenant was his mother Sushila Oke who died in the year 2007 and that the Plaintiff was residing in the suit premises with her and that he has sought the transfer of tenancy in his name after the death of his mother ie., the residential tenancy and that his request has not been acceded to and that the LIC is trying to impose the condition of entering into a Leave and License agreement or a Lease agreement.

6. The Petitioner herein ie., the LIC filed an application under

Order 7 Rule 11 (d) of the CPC on the ground that the suit was not maintainable (similar applications were filed in other Suits). The said application filed under Order 7 Rule 11(d) of th CPC came to be allowed by the Trial Court and the suit involved in the present Writ Petition and the plaints in the other suits, which are the subject matter of the other nine Petitions were rejected, which resulted in Civil Revision Applications being filed by the Plaintiffs ie. the tenants before the Appellate Bench of the Small Causes Court. It seems that the said Revision Applications came to be allowed and the applications under Order 7 Rule 11(d) filed by the LIC came to be rejected and the Suits came to be restored back to file.

It is after the restoration of the Suits by virtue of the orders passed in the Revision Applications that the instant application for amendment of the plaint came to be filed. The amendment sought was by way of incorporating paragraphs 3(a), 3(b), 3(c) and 3(d) and 12(a), 12(b), 12(c) and 12(d). The sum and substance of the averments in the said paragraphs relate to the fact that the Plaintiff is residing in the suit premises since the year 1951. That on the death of the Plaintiff's father the tenancy which was

granted to the father of the Plaintiff devolved upon his mother on the death of the Plaintiff's father on 19th October 1984. The LIC was the transferee of the assets and liabilities of the erstwhile Good Will Assurance Company Ltd., by virtue of which the plaintiff's tenancy was also transferred to the LIC when the relationship between the erstwhile Good Will Assurance Company Ltd and the original tenant were governed by the Bombay Rent Act 1947 and is presently governed by the Maharashtra Rent Control Act, 1999.

7. It is further sought to be incorporated that the transmission of tenancy to the Plaintiff would have to be on the same terms and conditions of the original tenancy and that there can be no dilution of those rights that inspite of repeated demand the landlord is refusing to modify the record for frivolous reasons, that the provisions of the Maharashtra Rent Control Act 1999 which is a special law, would prevail over the Transfer of Property Act, 1882, which according to the Plaintiff is a general law.

8. It seems that a reply was filed by the LIC to the said application for amendment (same is not annexed to the above

Petition). However, the amendments sought were opposed on the ground that the amendments, if allowed would change the nature of the suit.

9. The Trial Court considered the said application and by the impugned order dated 15th January 2015 has allowed the same. The Trial Court whilst allowing the application has recorded a finding that the proposed amendments are not contrary to the averments in the plaint. The Trial Court was of the view since the declaration of tenancy was sought by the Plaintiff, whilst deciding the status of the Plaintiff vis-a-vis the Suit premises, the question would be relevant as to when his mother Mrs. Sushila Oke came to be inducted in the Suit premises and therefore, whilst deciding the question, it will need the relevant material, which the Plaintiff seeks to place on record by way of the proposed amendments.

10. The Trial Court also observed that the reason for seeking the amendment was the judgment of the Apex Court in the case of **Dr. Suhas H. Pophale Vs. Oriental Insurance Company Ltd. Reported in 2014 (4) SCC 657**. The Trial Court, therefore, observed that in terms of the judgment of the Apex Court the

crucial date vis-a-vis the claim of tenancy would be 16th September 1958 and having regard to the said date the Plaintiff wishes to amend the plaint so as to introduce facts relating to acquisition of the tenancy by his father prior to 16th September, 1958.

11. The Trial Court also considered the fact that the trial was yet to begin and the issues have also not been framed. The Trial Court lastly observed that the amendments are necessary for better understanding of the dispute and has accordingly by the impugned order dated 15th January, 2015 has allowed the application.

12. Heard the learned Counsel for the parties. The learned Counsel Mr. Bhave appearing for the Petitioner LIC in each of the above Petitions would contend that by allowing the amendment the nature of the Suit has changed. The learned Counsel would contend that the Plaintiff was claiming declaration of tenancy in respect of the premises which are public premises within the meaning of the Public Premises Eviction Act, 1971 and therefore, the Plaintiff is not entitled to the relief of declaration as sought. The learned Counsel sought to make submissions which were revolving around the merits of the case of the Plaintiff now sought

to be incorporated by way of the amendments.

Per contra the learned Counsel appearing for the Respondent / original Plaintiff Shri. Ajay Kumar would make submissions in support of the impugned order. It was the submission of Shri Ajay Kumar that a foundation for seeking the declaration has already been laid in the original plaint as filed. The Plaintiff has averred that he is claiming transmission of tenancy from his mother who is the original tenant and who expired in the year 2007. The learned Counsel would contend that by the amendment sought the Plaintiff is only seeking to place certain facts on record so as to elaborate the case, which has already been pleaded. It was lastly the submission of the learned Counsel that having regard to the pleadings, which are already existing, the amendments do not change the nature of the Suit.

13. Having heard the learned Counsel for the parties I have considered the rival contentions. As indicated above the instant Suit has been filed for declaration of tenancy in respect of the suit premises. The Plaintiff has laid a foundation for claiming the said declaration by setting out a case that he is claiming the

transmission of tenancy from his mother who is the original tenant. The fact that the mother was the tenant in respect of the suit premises till her death in the year 2007 is, therefore, already on record. What the Plaintiff seeks to incorporate in the plaint by way of amendments sought are facts relating to the tenancy, as to how the tenancy was granted to his father by the erstwhile landlord ie. Good Will Assurance Company Ltd., in the year 1951 and thereafter how the tenancy devolved upon his mother ie. Mrs. Sushila Oke and the basis of his claim for tenancy on the ground that he was residing with his mother at the time of her death. No doubt the Plaintiff is seeking to amend the plaint so that the facts pleaded would be such that the Plaintiff's case would come within the ambit of the judgment in **Dr. Suhas H. Pophale's** case wherein the defining date as it were is 16th September, 1958. It is well settled that amendments which do not change the nature of the Suit and which are necessary for an effectual and complete adjudication of the Suit are required to be allowed. The Trial Court in the said context, therefore, observed that even if the amendments were not allowed it would still have to consider and go into the question as to when Mrs. Sushila Oke has acquired the tenancy of the suit premises. Hence, what is sought to be done by

the amendment is to amplify the case which is already pleaded in the plaint. In my view the finding of the Trial Court that the proposed amendments do not change the nature of the Suit cannot be faulted with having regard to the case as originally pleaded in the plaint and the amendments which are now sought to be incorporated in the plaint. The amendments are also necessary for a complete and effectual adjudication of the claim raised by the Plaintiff. It is well settled by the judgments of this Court as well as the Apex Court that whilst considering the application for amendment the merits of the case need not be gone into as the same can obviously be gone into at the appropriate stage. In my view, therefore, it is not necessary to consider the merits of the claim as it is for the Plaintiff to prove his case in terms of the amended plaint at the trial of the Suit. It is required to be noted that pursuant to the impugned order dated 15th January, 2015 the plaint in the Suit in question involved in the above Petition as well as the Suits involved in the companion Writ Petitions has already been amended, which fact is not disputed by Shri Bhawe, the learned Counsel appearing for the Petitioner. In my view, therefore, the impugned order dated 15th January, 2015 does not suffer from any error of jurisdiction or any other illegality or

infirmity for this Court to interfere in its Writ Jurisdiction. The above Writ Petition as well as the companion Petitions are accordingly dismissed.

14. Rule stands discharged in all the Petitions with no orders as to costs.

(R.M.SAVANT, J.)