

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.1565 OF 2015

Syed Sami S/o Syed Sahebjan ...Petitioner.

Versus

Ranjit S/o Naayanrao Deshmukh
and another. ... Respondents.

...

Mr.G.R.Syed, advocate for the petitioner.
Mr.Kunal Kale, advocate holding for
Mr.M.S.Deshmukh, advocate for Respondent No.2.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 15.12.2017.

PER COURT :

1. The plaintiff had filed suit for injunction claiming himself to be in possession. By way of amendment application Exh.61, the plaintiff alternatively prayed for recovery of possession. The application for amendment is allowed. Aggrieved thereby, the present petition.

2. Mr.Syed, learned counsel submits that the Court has failed to consider the bar U/o II Rule 2 of the C.P.C. The plaintiff has to claim all reliefs in the suit. The plaintiff had pleaded in the plaint that he is in possession of the property. Now by way of amendment is taking a contradictory plea. The same is not permissible. The learned counsel relies on the judgment of the learned Single Judge of this Court in the case of **"Ghanshyam Newandram Parwani Vs. Nandlal Nagardas Vora"** reported in **2003 (4) Mh.L.J. 945.**

3. The Bar of Order II Rule 2 of the C.P.C. would not arise at this stage. It is in the same suit, the application for seeking relief of possession is filed. The nature of the suit would not change. The Court has considered about the necessity for allowing the amendment application. The defendant will have every right to file additional Written Statement to the amendment carried out and put forth his case.

4. The discretion has been exercised by

the Court in a reasonable manner.

5. In light of that, I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India.

6. The Writ Petition as such is disposed of. No costs.

(S.V.GANGAPURWALA, J.)

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