

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

WRIT PETITION NO. 9875 OF 2017

Vinod Gopalan Puthanpure,
Age. 53 years, Occ. Business,
R/o. Tyre Life and Practical Auto Works,
181, Jilla Peth, Gujrathi Galli,
Jalgaon, Tq. & Dist. Jalgaon.

...Petitioner.

Versus

Jyoti Anil Shah,
Age. 60 years, Occ. Insurance Agent &
National Saving Agent,
R/o. 54, Polan Peth, Bhatia Market,
Jalgaon, Tq. & Dist. Jalgaon.

...Respondent.

Advocate for Petitioner : Shri. P.N. Kutti.

Advocate for Respondent : Shri M.S. Kulkarni.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 13th September, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 21/06/2017, by which, the Trial Court has allowed application Exhibit 71 and has permitted the respondent /plaintiff to amend her plaint in R.C.S. No. 186/2010.

3. I have considered the strenuous submissions of Shri Kutti,

learned advocate for the petitioner and Shri Kulkarni, learned advocate on behalf of the respondent/plaintiff. With their assistance I have gone through the petition paper book.

4. Shri Kutti, places reliance upon the following judgments :

1) *Suhas D.R. Anvekar Versus Durgadas Ramnath Lotlikar [2016 (1) BCR 17].*

2) *Mr. Antonio Braganza S/o. Mr. Gregorio Braganza Versus Mr. Antoneto John D'ouza @ Johny D'Souza [Order dated 19/01/2016 in Writ Petition No. 686/2015].*

5. The contentions of the learned counsel for the petitioner are that the proposed paragraphs 11 A to 11 E are an after thought. The evidence of the plaintiff has already been recorded and has now concluded. The suit has been filed for eviction on the ground of bonafide requirement.

6. It is, further, submitted that the details about the business / service of the petitioner / defendant have been sought to be brought on record through an amendment, without stating as to when did the plaintiff actually gather the said information. Issue of comparative hardship was never pleaded in the plaint and after the recording of oral evidence of the plaintiff was concluded, the said ground has been raised

for the first time.

7. It is then submitted that the proviso below Rule 17 under Order VI of the C.P.C. would indicate that an amendment ought not to be permitted unless due diligence is established. The plaintiff has failed to indicate that the proposed paragraphs, based on information, could not have been included in the plaint despite her best efforts. The proviso is introduced to ensure that the matters are not delayed or dragged and amendments are not permitted which would result in delay in the trial.

8. Shri Kulkarni, learned advocate points out from the pleadings in Exhibit 71 that it is specifically stated that the information about the defendant being a Director of a company which was brought into effect on 10/06/2005, was not within the knowledge of the plaintiff earlier. So also, the defendant has started a new company, and this information as well was not within the knowledge of the plaintiff. If these material aspects were within the plaintiffs knowledge, there was no reason for the plaintiff to hold back the said information.

9. He, further, submits that the defendant has specifically held back the said information in his written statement. It is not divulged that the defendant is a Director of Akshay Automobile Private Limited started on 10/06/2005 and is also Director of Vijayalaxmi Automobiles Private

Limited. When the plaintiff gathered this information on 05/01/2016, further information was collected by visiting the Website of these two companies. It is based on this information gathered on 05/01/2016 and 07/01/2016, that Exhibit 71 was filed with promptitude on 12/02/2016.

10. Having considered the submissions of the learned advocates for the respective sides, I have considered the record available.

11. It is undisputed that the suit has been filed for eviction on the ground of bonafide requirement. It is probable that the information about the defendant being a Director of two companies and the said companies having their own independent establishments, would not have been held back by the plaintiff, had she gathered the said information earlier. It appears from Exhibit 71 that when the plaintiff came to know of the same, she visited the website of these companies and gathered further information including the annual turnover of Rs. 50 crores, in so far as first company is concerned. The plaintiff would not have derived any advantage, by withholding the said details as it would be detrimental to her own interest.

12. It also appears from Exhibit 71 that, new information is being put forth through the proposed amendment. Other details as regards

the two sons of the plaintiff are on record. One of her sons has been issued with a notice by the landlord on 07/01/2016, by which, the landlord has called upon the said son to vacate the rented premises. He is a Chartered Accountant.

13. On the ground of due diligence, as is raised by the petitioner, I find that the plaintiff has moved Exhibit 71 within a month from gathering the information about the business identity of the defendant and the notice received by her son from the landlord. So also, it cannot be ignored that the defendant, while opposing the suit for eviction, has not disclosed that he is a Director of two companies. Whether this aspect may be significant or not would be considered by the Trial Court at a later stage. However, on the basis of such business details, it may be established that the defendant was eventually capable of obtaining an alternate accommodation.

14. In so far as the contention that the plaintiff has never pleaded the point of hardship in the suit and is now being introduced through the amendment, is concerned, this aspect in my view, is a issue which is to be inferred from the oral and documentary evidence. Whether the plaintiff has actually so pleaded or not may not be that significant when the Court would always endeavor to do justice to the parties. Introducing the pleading of hardship would, therefore, not result in

changing the nature of the suit.

15. The Hon'ble Apex Court has crystallized the law that the merits in the amendment should not be assessed while considering, whether the proposed amendment should be granted.

16. In so far as the hardships suffered by the petitioner / defendant are concerned, the Trial Court has awarded costs of Rs. 3,000/- to be paid to the State. Grievance of the petitioner is that if the amendment is allowed, there is a possibility that the plaintiff may lead further evidence which would cause hardships to the petitioner / defendant.

17. Considering the above fact situation and the law laid down, I do not find that the view taken by this Court in Suhas D.R. Anvekar & Antonio Braganza cases (Supra), would render the impugned order, perverse and erroneous.

18. This petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)